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ABSTRACT

Explored are the various kinds and degrees of interdependence between private colleges and state governments. An overview examines the meaning of "private," and the legal relationships are analyzed: Supreme Court Decisions, the state action doctrine, sifting facts and weighing circumstances, and case law trends toward state action. Categories of relationships are established, and the situations of individual states within them explored: minimal involvement of the state, financial aid to public and private sectors, specific aid to the private sector, and contracts and consortia. (MSE)

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THE STATE AND PRIVATE EDUCATION:

Interdependence and State Action

By

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Chapter 1

An Overview

Historically, the American system of higher education has been divided into two sectors, public and private. Public institutions, under direct control by the state, are arms of state government, while private institutions controlled by private individuals, function apart from the state's postsecondary educational system. This structure of two systems, public and private, is acclaimed as providing a diversity and pluralism that allows creativity and innovation to exist in higher education. This principle has caused some educators to view with alarm the current financial crisis facing private higher education and express concern for its future existence.[1]

Inflation, increased operating costs, and tuition increases have prompted educators and state officials to advocate state aid to the private sector.[2] At the same time, changing enrollment patterns and limited state funds have prompted some states to use facilities and programs in the private sector instead of expanding public institutions or establishing new state facilities.[3] A study entitled State Financial Measures Involving the Private Sector of Higher Education surveyed state financial assistance plans for private higher education. The study found that

> a total of nineteen states provide one or more major forms of institutional support to private institutions of higher education. These forms

> include contracts for various kinds of educational services (13 states); facilities bonding authority (11 states); and formula-based grants to operating budgets (8 states). Seven states have at least one such program, and twelve have two or more [McFarland, Howard, and Chronister, 1974, p. 17].

Programs of state aid and reliance on the private sector establish an interdependent relationship between the state and private higher education. This relationship not only raises questions regarding higher education's diversity, but may also activate a legal doctrine called "state action."

"State action" defines when private corporations or persons act as agents of the state. It is found when the state is involved to a significant extent in an interdependent relationship with a private individual or corporation. Where state action is found the private individual must share the state's responsibility to protect those rights guaranteed to citizens under the Fourteenth Amendment. Robert M. Hendrickson (1972, P.119) has analyzed the case law on state action in private higher education and has described the statutory relationship between the state and private higher education in five states.[4] His study recommends a survey of all state statutes and state master plans to determine to what extent the state relies on the private sector to meet the educational needs of its citizens and to assess the private sector's future role in the state's postsecondary system.

The present study, funded by the Carnegie Council on Policy Studies in Higher Education, analyzes the case law on state action to define the relationships between states and private institutions. It also examines contacts between the states and private institutions through an analysis of state statutes and master plans. A synthesis of these relationships is significant to an understanding of how the concept of private education varies in each of the states and to a determination of whether a particular situation yields state action. Further, an analysis of "state action" can provide an understanding of the meaning of "private" as opposed to "public" action. Thus, on a continuum between public and private action, degrees of "privateness" can be identified throughout the 50 states.

The statutory relationship defines the degree of state regulation and control and the state's dependence on the private sector to fulfill its education needs. The master plans, developed by the state to coordinate the maintenance and growth of its postsecondary system, provide projections of future relationships between the state and the private sector. Chapters 3 through 6 break the states down into four categories based on the type of relationships between the state and private institutions. The analysis includes a discussion of the characteristics of these relationships for each state within the category.

The Meaning of "Private"

Through a synthesis of data on case law trends, statutory contacts, and master-planning relationships with the private higher education, degrees of "privateness" can be identified in each of the 50 states. Put another way, this analysis provides the means to determine when relationships between the state and private institutions moves them from private to quasi-public or public status.

The reader may ask, "Why do we need to know when an institution's contacts with the state move it into the realm of the public sector?" We need to know because such a change in status can cause significant changes in institutional mission and result in political pressure being brought to bear on the institution to force it into a model desired by the public. Educators need to know the effects of such changes on the institution before advocating increasing involvements with the public sector. However, educators seem to ignore these questions when discussing the need for additional contacts between the state and private institutions.

To organize this synthesis, the tests used in Jackson v. The Statler Foundation, supra. were considered. Jackson's first test, "the degree to which the private organization is dependent on governmental aid," includes such contacts as: tax exemptions, eminent domain powers, purchases through state agencies, student aid programs (direct grants, capitation grants, loans or bonds), and contracts. The second test, "the extent and intrusiveness of the governmental regulatory scheme," includes certification,

mandatory annual reports, coordination by a state agency, and the requirement to participate in state planning. "Whether the regulatory scheme connotes governmental approval of the activity or whether the assistance is merely provided to all without such connotations," test number three, considers the same contacts as does test number two but does so in terms of their purposes and effects.

The fourth test is "the extent to which the organization serves a public function or acts as a surrogate for the state." In this test, the statutes and master plans were analyzed for proposals, programs, or language that indicated: a reliance on the private sector to educate a portion of the state's citizens; a public interest in the purpose and programs of private higher education; an assumed responsibility to ensure the survival of private higher education; a contract to provide private-sector services and programs to the state's citizens; and an established or proposed consortium or cooperative arrangement between the public and private institutions. Also included in this test was the level of coordination by a state agency and the level of involvement in the master-planning process by the private sector.

The 50 state relationships were plotted on a chart using the four tests of Jackson as well as coordination and planning, which fall under two of these tests. This process revealed that under test number one the states could be categorized into levels of state contact with the private sector useful for discussing state action and the meaning of "private" higher education. These levels were

as follows:

Category 1 - minimal state involvement with private higher education;

Category 2 - student aid to those enrolled in public and private higher education;

Category 3 - financial aid programs exclusively for students enrolled in the private sector and aid to private institutions;

Category 4 - contracts and consortium agreements between the public and private sector.

Footnotes

1/ Berdahl, R. O., "Private Higher Education and State Government," Educational Record, Summer 1970, 51, 285-295; Bowen, H. R., "Does Private Education have a Future," Liberal Education, May 1971, 57, 278-289, Bowen, W. G., "Public Interest in the Private University," Educational Digest, December 1968, 34, 13-15; Kenneson, W. A., "Private Higher Education:Demise or Transition," Educational Record, Spring 1969, 50, 267-273; and McFarlane, W. H., and Wheeler, C. L., "Views on State Aid to Private Colleges," School and Society, November 1969, 97, 439-441.

2/ E.g., Abraham, L. and Schweppe, L., A Limited Study of the Status of State Support to Private Higher Education (Washington, D.C.: The Academy for Educational Development, Inc., 1970); Levin, H., and Asman, J. W., Alternative Methods of State Support for Independent Higher Education in California (Sacramento, Calif.: California Coordinating Council for Higher Education, 1970); Lewis, R. S., State Relationships with Independent Institutions of Higher Education and Assistance to Students Attending Independent Institutions of Higher Education. (Hartford, Conn.: Connecticut Commission for Higher Education, 1972); 1972 Statewide Master Plan for Private Colleges and Universities of the State of New York (New York: Commission on Independent Colleges and Universities of the State of New York, 1972); and the Tucker Report (Jefferson City, Mo.: The Governor's Task Force on the Role of Private Higher Education in Missouri, 1970).

3/ E.g., A Development Plan for Higher Education (Trenton, N.J.: Board of Higher Education, 1974); The Regents for the University of the State of New York, Education Beyond High School (Albany, N.Y.: The State Education Department, 1972); and State Board of Education, The Master Plan for Higher Education in Pennsylvania (Harrisburg, Penn., 1971).

4/ The five states studied were California, Colorado, Illinois, Michigan, and New York. See Hendrickson, R. M., "Analysis of the State Action Doctrine as Applied to Private Higher Education," unpublished thesis, Indiana University, Bloomington, 1972; see also Hendrickson, R. M., "State Action and Private Higher Education, " Journal of Law and Education, January 1973, 2, 53-75.

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Chapter 2

A Legal Analysis of State Action and Private Higher Education

The Bill of Rights, contained in the first eight amendments to the U. S. Constitution, provides that the federal government shall not encroach upon the fundamental freedoms of the individual citizen. Among those freedoms is the right not to be deprived of life, liberty, or property without due process of law as guaranteed by the Fifth Amendment. Until passage of the Fourteenth Amendment, the fundamental freedoms contained in the Bill of Rights did not protect citizens from the actions of a state. The Fourteenth Amendment provides that

> no state shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court has used the due process and equal protection clauses of the Fourteenth Amendment to apply selectively the freedoms of the Bill of Rights to the states.[1] The private citizen and the private corporation, however, are not reached by its proscriptions unless the state has in some form insinuated itself into the affairs of the private person so that the actions of that person are deemed to be actions of the state (Civil Rights Cases, 1883). The quest

by the courts for the illusive distinction between truly private actions and actions taken by private persons on behalf of the state has given rise to the state action doctrine.

Section 1 of the Civil Rights Act of 1871, currently contained in chapter 42, Section 1983, of the United States Code, was enacted by Congress to further implement the provisions of the Fourteenth Amendment. Section 1983 provides that

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other personwithin the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

While the thrust of the Fourteenth Amendment is to prohibit actions by states, the thrust of Section 1983 is to prohibit actions by private persons under color of any statute of any state.

Most of the cases that define the limits of state action dispose of challenges to private conduct under Section 1983. Another series of cases arises under Section 1331 of Chapter 28, United States Code, which grants jurisdiction to federal courts of cases arising under the Constitution, laws,and treaties of the United States,

and deals primarily with issues of federal action. Private persons, however, have also been found to be involved in federal action and the test reviewed by the courts to determine whether the federal government has insinuated itself into private conduct are virtually the same as in the state action cases. This chapter will discuss cases that deal with state action without regard to whether they involve actions brought under Section 1983 or Section 1331.

The legal implications of the state action doctrine for private higher education are of far-reaching importance. The court-imposed restrictions on private institutions that are found to be subject to the Fourteenth Amendment can significantly affect an institution's very mission. The areas most often discussed are student discipline and discrimination in admissions and employment practices. Implementation of Bill of Rights protections, such as right of an accused to counsel and a formal due process hearing, significantly increase the cost of operating a private institution. The freedom to hire, fire, and promote faculty and staff employees, which is curtailed by application of the state doctrine action, has forced private institutions to adopt costly, time-consuming, and sometimes artificial employment practices to satisfy the courts.

But student discipline and employment practice only scratch the surface of the possible restrictions on formerly private action. If a private institution is the equivalent of a government agency, then the substance of its degree-granting programs becomes a subject

for public scrutiny. Taxpayer suits against private institutions, based upon government subsidies provided via the tax exemption, could force institutions to eliminate courses and methods of instruction that do not meet public approval. Private bequests to institutions to be administered for the benefit of minority-student programs could definitely be found discriminatory in light of the Fourteenth Amendment restrictions. In sum, the ability of a private institution to offer experimental programs may be severely challenged by application of the state action concept.

Some commentators (see, for example, "Common Law Rights for Private University Students," 1974) have suggested that the common- and statutory-law restrictions on private action are sufficient to direct private institutional planning into channels suggested by state action. A survey of the cases affecting private higher education institutions disclosed, however, that virtually all significant cases recently decided or pending are based upon state or federal action (see generally the College Law Digest). Traditional common-law concepts applied to private institutions simply do not cut as deeply to the core of privateness as does state action.

Supreme Court Decisions

The Supreme Court has defined the scope of the equal protection and due process clauses of the Fourteenth Amendment in terms of whose actions constitute those of the state, or, conversely, when private action equals state action.

The court held that "only such acts as may fairly be said to be that of the state's are covered bt the Fourteenth Amendment."[2] While the court stated in U.S. v. Guest (1966), that the Fourteenth Amendment protects the individual against state action and not against the wrongs done by individuals, they also held that the state's involvement "need not be exclusive or direct." The Court has also held that the equal protection clause applied to private action if to some significant extent the state in any of its manifestations has been found to have "insinuated itself into a position of interdependence with the private individual."[3]

The Fourteenth Amendment provided constitutional validity to the proposition contained in Section 1983 that due process and equal protection may not be denied by a private person acting "under color of state law" (Burton v. Wilmington Parking Authority, 1960; Civil Rights Cases, 1883). Although, "under color of state law" is the standard used to judge violations of the federal civil rights statutes (42 U.S.C. §1983), the Court has held that to show that a private person acted under color of state law also bring the violation "within the ambit of the 14th Amendment," (U. S. v. Price, 1966).

In its decisions the Supreme Court has not developed a legal formula for determining when private action equals state action. The court stated:

> This Court has never attempted the "impossible task" of formulating an infallible test for

> determining whether the state "in any of its manifestations" has become significantly involved in private discrimination. "Only by sifting the facts and weighing circumstances" on a case by case basis can a non-obvious involvement of the state in private conduct be attributed to its true significance [Rietman v. Mulkey, 1967].

The Court, however, has established a process of balancing the constitutional rights of the private person against the rights guaranteed but the Fourteenth Amendment (for example, Amalgamated Food Employees Union v. Logan Valley Plaza, 1968, Terry v. Adams, 1953, and Marsh v. Alabama, 1946).

In "sifting facts, weighing circumstances," and balancing constitutional rights, the Court has held that specific types of state involvement constitute state action. For example, any actions by the state or its agencies may not deny rights protected by the Fourteenth Amendment (Cooper v. Aaron, 1958). Actions by a city, town, county or their agents also constitute state action (Avery v. Midland County Texas, 1968; accord., Griffin v. Maryland, 1964, actions of a county sheriff); and the Court has also held that actions by private parties equal state action where state law has compelled the act (Adickes v. S. H. Kress and Co., supra, at 152; Williams v. Rhodes, 1968),and that state action includes actions of state courts or judicial officials in their offical capacity (Shelley v. Kraemer,

1948 at 19, 20; (Adickes v. S. H. Kress and Co. supra).

Private corporations have also been held subject to Fourteenth Amendment responsibilities. In Marsh v. Alabama, (1946), in which case the Gulf Shiipbuilding Corporation owned and built a town next to its manufacturing facility, the Court held:

> Ownership does not always mean absolute domain. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it [p. 506].

The Court ruled that the company town was opened to public use and that, therefore, the Fourteenth Amendment protections could not be denied (accord. Amalgamated Food Employees Union v. Logan Valley Plaza, 1968).

Private corporations performing public functions can also come under the doctrine of state action. In Burton v. Wilmington Parking Authority (supra), a private corporation leased space for a restaurant from a state parking authority in a publicly owned building. The Eagle Restaurant refused to serve blacks and was sued by a black man who claimed that the actions of the restaurant owners amounted to state action. While the district and circuit courts relied on a number of facts indicating minimal state involvement, the Supreme Court noted that the persuasiveness of separate circumstances

pointing to minimal state involvement was "diminshed when evaluated in context of other factors which must be acknowledged" (ibid. at 723) and that "addition of all these activities, obligations and responsibilities of the authority, the benefits mutually conferred, together with the obvious fact that the restaurant is operated as an integral part of a public building devoted to public parking service, indicates a degree of state participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn" (ibid. at 724).

In Evans v. Newton (1966), the Court was presented with the issue of whether a private park could be subject to Fourteenth Amendment requirements. The city of Macon, Georgia, was named trustee under the will of Senator Bacon to administer land to be used as a park for members of the white race only. If this stipulation was not met, the land reverted to his heirs. Since the city could not serve as trustee without precipitating state action, the city sought court approval to transfer trusteeship to private individuals, thereby making the park a private corporation.

The Supreme Court held that the "momentum [the park] acquired as a public facility is certainly not dissipated ipso facto by the appointment of private trustees .. ." (Evans v. Newton, supra, 1966, 301.) The Court further ruled:

> The service rendered even by a private park of this character is municipal in nature. It is open to every white person, there

> being no selective element other than race. Golf clubs, social centers, luncheon clubs, schools . . . and other like organizations in the private sector are often racially oriented. A park on the other hand is more like a fire department or a police department that traditionally serves the community. Mass recreation through the use of parks is plainly in the public domain [ibid. at 301, 302, dicta].

The Court, therefore, concluded that the state action doctrine applied to private corporations when they perform a public function.[4] In a subsequent case, Evans v. Abney, (1970), the Court held that Evans v. Newton (supra), did not bar the state court from any involvement in restrictive agreements. The Court upheld the state court's decision enforcing the reversion of the property to the heirs of Senator Bacon and the dissolution of the trust if the racial discrimination provision was not observed. The state court based its decision on the language of the will and merely interpreted the testator's intent in accordance with the state trust law. The result of this decision was to deny benefits of the trust to all citizens and therefore did not violate the equal protection clause of the Fourteenth Amendment.

Private clubs, however, are not in the same class as a public park or fire department. In Moose Lodge No. 107 v. Irvis (1972), the Supreme Court held that the granting of a liquor license by the State of Pennsylvania did not "insinuate" the state into the affairs of the private club to the degree that the club's activities equaled state action. In developing its argument the Court stated:

> The Court has never held, of course, that discrimination by an otherwise private entity would be violative of the Equal Protection Clause if the private entity receives any sort of benefit or service at all from the state, or if it is subject to state regulation in any degree whatever. Since state-furnished services include such necessities of life as electricity, water, and police and fire protection, such a holding would utterly emasculate the distinction between private as distinguished from state conduct set forth in The Civil Rights Cases, supra, and adhered to in subsequent decisions.

The Moose Lodge was not "holding itself as a place of public accomodation, . . . [n]or is it located and operated in surroundings that although private in name, discharges a function or performs a service that would otherwise. . . be performed by the state" (ibid., cited Burton v. Wilmington Parking Authority, supra, note 14). The Court distinguished Burton v. Wilmington Parking Authority on the

ground that Pennsylvania did not benefit from the lodge as Delaware had benefited from the Eagle Restaurant in terms of enhancement of the parking authority project, that the lodge was located on private property while the restaurant had been on public land, and that the lodge was a private club while the Eagle Restaurant was open to members of the general public except for blacks.

The Court further stated that the stipulations attached to the state's licensing procedures--which required the club (1) to make physical alterations as the liquor board required, (2) to provide a list of members and employees of the club,and (3) to allow the liquor board the right to inspect it at any time--did not "make the state in any realistic sense a partner or even a joint venturer in the club's enterprise" (ibid).

Most importantly, the Court held that in order for an action of a private entity to be an unconstitutional exercise of state action a "sufficiently close nexus" must exist between the challenged action and the involvement of the state (ibid. at 173). The regulation by the state of the liquor license held by the Moose Lodge did not connote state approval of the private club's racial discrimination.

The Court did rule, however, that the section of the Pennsylvania Liquor Statutes (§130) that required the licensee to observe its constitution and by-laws was, if enforced, tantamount to the sanctioning by the state of the club's discriminatory rules. Pennsylvania was,therefore, enjoined from enforcing this statute as it applied to the Moose Lodge. While this decision seems contrary

to the holding in Evans v. Abney (supra), which did not bar the state from enforcing restrictive agreements of a trust, the distinction between the cases is that in Evans the state was simply enforcing the legal documents that established the trust, whereas in Moose Lodge the state granted a privilege to a private club on the condition that the club enforce its own constitution and by-laws. By granting the privilege on this basis the state was unconstitutionally encouraging the restrictive agreements present in the legal documents organizing the private club. Moose Lodge has important implications for the regulatory powers state educational agencies exert over private institutions.

In its most recent holding on state action, the Supreme Court reiterated the requirement of "a sufficiently close nexus between the State and the challenged action of the [private corporation] so that the action of the latter may be fairly treated as that of the State itself" (Jackson v. Metropolitan Edison Co., 1974 at 351). The Metropolitan Edison Company terminated the electric service of the plaintiff, Mrs. Catherine Jackson, for nonpayment of bills. Mrs. Jackson argued that under state law she was entitled to reasonably continuous electric service and the Metropolitan's termination for nonpayment, permitted by a provision of its general tariff filed with the Pennsylvania Utility Commission, was state action that deprived her of property without due process of law as guaranteed in the Fourteenth Amendment. Her claim of lack of due process was based on termination without a prior hearing by the company. Mrs. Jackson

claimed that the termination was state action because (1) the utility was extensively regulated by the state; (2) the state afforded the electric company a partial monopoly in providing electric service; (3) termination for nonpayment was permitted in a tariff filed with the state utility commission; and (4) Metropolitan performed a public function.

The Court noted that the mere fact of state regulation, even of extensive regulation, does not give rise to state action (ibid. at 350 citing the Public Utilities Commission v. Pollak, 1952). The Court admitted that the acts of a heavily regulated utility with at least something of a protected monopoly will more readily be found to be acts of the state, but held that the complained-of act must be tied to state regulation, that is, "sufficiently close nexus" between the state's involvement and private action must exist.

The arguments relating to state-protected monopoly and to state approval of the tariff that contained the provision permitting termination were found by the Court to be unpersuasive and factually weak. In dealing with the public-function argument, the Court noted that state action had been found in the exercise by a private entity of powers traditionally exclusively reserved to the state (ibid. at 352).[5] In the case of a utility, however, the state required the private company to furnish a service that the state was not required to furnish; hence, no public function. The plaintiff argued that Metropolitan was "affected with a public interest" and was thus performing a public function. In rejecting this contention,

the Court distinguished a business "affected with a public interest" that may be regulated for the public good, from a business that truly performed an act traditionally reserved to the state. A footnote to the opinion contains a significant point for private higher education. In it the Court stated:

> It is difficult to imagine a regulated activity more essential or more "clothed with the public interest" than the maintenance of schools, yet we stated in Evans v. Newton, 382 U.S. 296, 300 (1966):
>
> > "The range of governmental activities is broad and varied, and the fact that government has engaged in a particular activity does not necessarily mean that an individual entrepreneur or manager of the same kind of undertaking suffers the same constitutional inhibitions. While a State may not segregate public schools so as to exclude one or more religious groups, those sects may maintain their own parochial educational systems" [ibid. at 354].

Finally, the Court denied that state regulation of the partial utility monopoly formed the "symbiotic relationship" necessary for state action under Burton v. Wilmington Parking Authority (supra).

In his dissenting opinion to Jackson, Justice Douglas stated that the Court should not consider the various indicia of state action seratim, but should consider whether the aggregate of all

relevant factors compelled a finding of state responsibility (Jackson v. Metropolitan Edison Co., supra, at 360). Justice Marshall carried this reasoning one step further:

> But where the State has so thoroughly insinuated itself into the operations of the enterprise, it should not be fatal if the State has not affirmatively sanctioned the particular practice in question [ibid at 370].

Thus the dissenters would expand the nexus requirement of Moose Lodge to find that whenever a private entity is involved with the state to such a degree that some state action may be found, then state action will be applied to all of the actions of the private entity regardless of whether those actions involve the state.

In each of its decisions on state action, the Supreme Court has held to its nonspecific guide first enunciated in 1961 (Burton v. Wilmington Parking Authority, supra) of sifting facts and weighing circumstances and through the sifting and weighing process, has sought out a nexus (Moose Lodge, supra) between private action and state involvement.

The State Action Doctrine and Private Higher Education

The issue of whether the state action doctrine applies to private colleges and universities is of recent origin. Early cases, dealing mainly with the admission and dismissal of students, decided the issues on the basis of contractual obligations between the private institution and the student.[6] Not until 1962 did the courts deal substantively

with the constitutional issues of state action as applied to private higher education (Guillory v. Administration of Tulane University of Louisiana, 1962).

In Guillory, black students had been denied admission to Tulane University, a private nonprofit institution, solely on the basis of race. The students sued, arguing that under the holding of the Supreme Court in Brown V. Board of Education in Topeka (1954), the school was prohibited from such discrimination under the Fourteenth Amendment. The district court examined the contacts between the university and the state and found that the university had been formed from the public University of Louisiana, by property transferred from the state to Tulane. The act of the legislature transferring the property (Act 43, 1884) provided that the board of Tulane must include the governor, the state superintendent of education, and the mayor of New Orleans; provided that the property of Tulane was to be exempt from taxation; and provided for a reversion of state lands if Tulane ceased to operate as an educational institution.

Despite these contact, the court found Tulane to be a "private corporation, privately endowed and engaged in the activity of academic instruction and pursuit . . . Being essentially private its acts, without more, are 'private' acts in the Constitutional sense" (Guillory, supra, p. 677). The court distinguished Commonwealth of Pennsylvania v. Board of Directors of the City Trusts of Philadelphia (1957), on remand (1958) cert. denied (1958), where all of the members of the board of Girard College were public officials, as

opposed to Tulane where only 3 of 17 board members were public officials. The court noted that once the public land had been given to the private institution, significant state control ceased, and that the public land now made up only a small part of Tulane's campus. The court also found that tax exemption was available to all schools and was not unique to Tulane. In sum, the court compared the contacts between the state and Tulane with the symbiotic relationship in Burton v. Wilmington Parking Authority (supra) and found an absence of state action.

Three cases in the late 1960s raised the issues of state action in more detail and have become oft-cited precedent for a lack of state action: Grossner v. Trustees of Columbia University, (S.D.N.Y. 1968); Powe v. Miles, (W.D.N.Y. 1968), modified, (2nd Cir. 1968); and Browns v. Mitchell, (10th Cir. 1969).

Grossner v. Trustees of Columbia University was an action by students to restrain Columbia University, a private institution, from proceeding with disciplinary action against them for "sitting-in" peaceably in a university building. The students alleged "that Columbia University is so impressed with a public interest" that it fell within the scope of the Fourteenth Amendment. They pointed out that: (1) a large portion of the university's income was from public funds; (2) the university received other governmental benefits (e.g. a lease of city land to build a gymnasium); and (3) the university was performing a public function and, therefore, was a branch of government.

The District Court ruled that the great majority of money given to the university came from the federal government, and that jurisdiction for violations of the Fourteenth Amendment must be derived from state not federal action.[7]

The court then stated, "Receipt of money from the state is not, without a good deal more, enough to make the recipient an agent or instrumentality of government" (Grossner, supra, p. 546). The court reasoned that "this was true because many private contractors and enterprises increasingly depend on government for their business, and they would find themselves charged with state action" (Grossner, supra, at 547). The need was not to look just at state financial aid but at the degree to which "the state insinuated itself with the private agency so they are now interdependent . . ." (citing Burton v. Wilmington Parking Authority, supra). Even through state financial aid and federal involvement, therefore, the plaintiff failed to show a sufficient "degree of interconnection" between the university and the state.

The public-function issue was also rejected by the court, even though the extensiveness of federal aid supported the argument that the university was performing a public function. The court ruled that Columbia University did not fall in either the category of private property opened to the general public (Marsh v. Alabama, supra, at 506), or of a private corporation performing a public function (Terry v. Adams, 1953). In rejecting the public-function argument, the Court stated:

> If the law were what the plaintiff declares it to be the difficult problem of aid to private schools specifically parochial would not exist; . . . Indeed the very idea of the parochial school would be unthinkable. But cf. Pierce v. Society of Sisters, etc., (1925). [ibid. p. 549, n. 19 dicta].

In Powe v. Miles, several students at Alfred University were suspended for disrupting an ROTC commissioning ceremony. Alfred University, a private institution, operated a state ceramic school on its campus under contract with the state of New York. The students alleged that because of this contractual arrangement the institution was "operating under color of state law."

The Federal District Court stated:

> Implementing the approach outlined by the Supreme Court, the court concluded that Alfred University acted as a Private" institution in this situation, and not "under color of state law." The Alfred University charter indicates by its language the private character of the institution. The New York Education Law, Section 350 (3), defines a statutory or contract college such as the Ceramics College at Alfred University as a "college[s] furnishing higher education, operated by private institutions on behalf of the state . . ." Admission standards, degree requirements, and courses of study are established by the university. Faculty tenure and promotions are

> governed by the University President in conjunction with various faculty committees. Finally, the administration of campus life, the day-in day-out operation of the university and especially the discipline of students is handled exclusively by Alfred University, [Powe, supra, p. 1274].

The court cited Grossner (supra) in disregarding the financial aid received by the ceramics school and the prorated salaries of the dean of students and the president.

The district court ruling in Powe was modified, (2nd Cir., 1968), by the U. S. Court of Appeals. For students enrolled in the liberal arts college the appellate court agreed that there was no state action involved. The court stated that the public function issue for a private institution had been settled in Evans v. Newton (supra). Even in questions of discrimination the private institution would not encounter constitutional difficulties (Powe v. Miles, 2nd Cir. 1968).

The court also held:

> [T]he fact that New York has exercised some regulatory powers over the standard of education offered by Alfred University does not implicate it generally in Alfred's policies toward demonstrations and discipline [ibid. p. 81].

state's regulatory power did not "so far insinuate" the state into the functions of the private institution to constitute state action as was found in Burton. Therefore, the students enrolled in the liberal arts college did not fall under the ambit of the Fourteenth Amendment.

However, for students enrolled on the ceramics college the appellate court stated:

> We hold that regulation of demonstrations and discipline in the New York State College of Ceramics at Alfred University by the President and Dean of Students constitutes state action for the seemingly simple and entirely sufficient reason that the state has willed it that way. The very name of the college identifies it as as state institution. . . . [W]e have extensively reviewed the statutes making the college an integral part of the State University; it suffices here to cite Educational Law §6102, whereby Alfred University maintains discipline and determines educational policies with respect to the state college "as the representative of the state university trustees" [ibid. p. 82].

The court rules, therefore, that Alfred University, as a private institution, was beyond the state action doctrine, but that it was an

agent of the state government in the programs it had contracted to provide for the state. The court dismissed the difficulties that could be caused by the dual status of Alfred University by simply stating "that would be Alfred's problem" (ibid. p. 81).

In Brown v. Mitchell, several students were suspended by the University of Denver, a private insttution, for holding a sit-in in a nonpublic area of university buildings. A hearing committee had recommended probation, but the board of trustees of the institution voted to suspend the students. The students argued that their rights under the Fourteenth Amendment had been violated by the board's action because the University of Denver was "acting under the color of state law." The students presented the following arguments: (1) the university was incorporated by the state as a nonprofit, tax exempt educational institution; (2) the institution received financial aid from the state; and (3) the university enjoyed a tax exemption, not generally available, on the university's noneducational income. Citing Marsh v. Alambama (supra), the students also alleged that the university was performing a public function and that its grounds were opened to public use; therefore, the user's rights should prevail.

The district court ruled that more incorporation or the granting of tax exempt status did not "so insinuate" the state into the affairs of the private institution as to constitute state action. The court dismissed the argument based on a special tax exemption by stating:

> The benefits conferred however characterized have no bearing on the challenged actions beyond the perpetuation of the institution itself. . . . This bounty can[not] be utilized in any way to dictate or influence administration of university affairs [Brown v. Mitchell, supra, p. 596, citing Grossner and Powe].

The court conceded that, judged by the totality of its public events and areas open to the public, the university could be likened to Marsh v. Alabama and Logan Valley, but denied that (1) the students had demonstrated a protectable First Amendment right and (2) that the university was performing a public function.

Sifting Facts and Weighing Circumstances

One argument for application of the state action doctrine to private colleges and universities is that they act "under color of state law." This argument is supported by the fact that the private institution is incorporated by the state as a nonprofit, tax exempt, educational institution, so that their existence and authority to operate are achieved through the state's corporate laws.[8]

In Greenya v. George Washington University, (D.C. Cir. 1975) the circuit court found that "granting tax-exempt status to a class of organizations such as institutions of higher learning, although it tends to foster support for organizations so exempted, does not involve Government in the management of such organizations or in the

management of such organizations or in the promotion of particular exempted organizations within the class. Even in the more rigid context of the Establishment Clause mere tax exemption of religious organizations has consistently been found not to breach the separation of church and state" (ibid. p. 560. citing Walz v. Tax Commission, 1970, see also Mangum and Hendrickson, 1975, p. 629). Some scholars have argued that the First Amendment mandates a tax exempt status to all nonprofit organizations and that to tax religious organizations would be in violation of the First Amendment's free exercise clause because such taxation might impinge on the existence of religious organizations.

> The "Free Exercise" clause of the United States Constitution prohibits government from taking any action which would inhibit the free exercise of religion. On the other hand, the'Establishment Clause" prohibits government from taking any action which would tend to support religion. In walking this tightrope, government exempted religious institutions from taxation and from many reporting requirements to avoid conflict with the "Free Exercise" clause. If it had stopped there, government would have given a special benefit to religious organizations in violation of the "Establishment Clause." In order to remedy the situation, the tax exemption was extended to cover charitable religious, educational and literary organizations [Mangum and Hendrickson, 1975; see also Kauper, 1969, p.6].

Another rationale for action "under color of state law" is the state's regulatory power to set minimum standards for academic programs. This rationale also is used to support a second argument for the application of the state action doctrine: that is, that the state has thus "insinuated itself" into the operations of private colleges and universities. The courts have held, however, that the fact that the state polices educational programs and requires certain minimum standards before they are approved does not involve the state in control of the institution.[9]

In Coleman v. Wagner College (2nd Cir. 1970), black students who had been expelled attempted to show state action through the state's requirement that each college file its procedures whereby it maintained order on campus. The court held that such a requirement did not "involve" the state in each college's disciplinary procedures, because the state did not dictate the procedures to be used, but simply required them to be filed.

In the recent case of Cohen v. Illinois Institute of Technology (N.D. Ill. 1974), the plaintiff, a female professor who alleged discrimination in tenure and promotion, pointed to extensive state criteria in certain areas for graduates of the school: (1) the state "controlled" certain undergraduate programs in psychology by requiring them to train and certify secondary school teachers; (2) the state "controlled" certain undergraduate programs leading to the bachelor of science degree, (3) at least one program was established to conform to the requirements of psychological internship in the public schools

in Illinois in order for its graduates to meet state requirements for certification as school psychologists and (4) certain courses conformed to entrance requirements of some graduate schools of the public University of Illinois. The court found that "it is obvious from the foregoing summarization that I.I.T. cooperates with the State of Illinois and is dependent upon its approval in many respects. This does not make it a State institution or agency with respect to the tenure and salary of its academic staff, however. In fact, plaintiff does not allege State involvement in any of the personnel practices complained of" (ibid. p. 204, citing the nexus requirements of Moose Lodge, supra.).

The U. S. Court of Appeals for the Seventh Circuit affirmed the district court's finding of lack of state action. Judge John Paul Stevens, writing the opinion stated:

> It is settled, however, that the mere existence of detailed regulation of a private entity does not make every act, or even every regulated act, of the private firm, the action of the state.

If a particular state regulation fostered discrimination, or even approved it, the situation would be different, the court said. Finally, Stevens said that the lack of prohibition against discrimination, even against the background of other detailed regulation of the school by the state, did not cast the aura of state approval over discriminatory acts by I.I.T. (Cohen v. I.I.T., 7th Cir. 1975).

A second rationale to construe an interconnection between the state and a private institution is public aid. In Grossner, however, the district court stated that receipt of money from the state was not "without a good deal more, enough to make the recipient an agent or instrumentality of government." (supra, at 546). The majority of decisions have supported that view without a detailed analysis.[10]

In Wahba v. New York University (2nd Cir. 1974), the plaintiff alleged that receipt by the university of a research grant from the National Institutes of Health, under which he was employed, involved the university in federal action when it refused to renew his teaching contract. The court held substantively that the receipt of federal funds for research was not sufficient to involve the university in federal action.

In McLeod v. College of Artesia (D.N.M. 1970), the fact that the college was initially financed through the sale of bonds did not implicate the institution as an agent of the state.

Another rationale for deriving an interconnection between the state and private colleges and universities is the institution's power of eminent domain. This rationale was rejected by the court in Blackburn v. Fisk University (6th Cir. 1971).

In addition to "color of state law" and state "insinuation into institutional operations," a third major argument used to show state action is that the private institution, like the park in Evans v. Newton, performs a public function. Implicit in this argument is the

premise that education is a function solely of the state government. The courts have rejected both the premise and the argument.[11] In Powe v. Miles, the Circuit Court cited Evans V. Newton (supra) as settling the issue. Evans set schools apart from other types of private corporations that have public functions.

A second public-function rationale is that certain areas of the university, because they are opened to public use, are subject to state action. The court conceded this might be true in Brown v. Mitchell (supra). This allegation, however, has been rejected in all other cases.[12]

The argument concerning the public function of education seems strongest to those who advocate the application of the state action doctrine to the private sector, and it may be particularly strengthened if states begin to include private institutions in their state plans for providing higher education. It may be argued that the private institution takes on a public function when it is included in the state's master plan for higher education.

The final legal argument for the application of the state action doctrine focuses on contracts for academic programs between the state and the private institution. Powe v. Miles held that the state action applied only to contracted programs within the institution, specifically where state law has labeled contracted programs of the institution part of the state's public system. The court decisions have not discussed whether state action applies if the law does not

specifically label the program as part of the state system.

The state action cases and the foregoing arguments indicate areas of contact between the state and private higher education that could lead to the application of the state action doctrine.

Case Law Trends Toward State Action In Private Higher Education

The most significant case yet to take up the question of state action was handed down by the U. S. Court of Appeals for the Second Circuit in April 1974. Although it was not reviewed by the Supreme Court, the decision in Jackson V. The Statler Foundation (2nd, Cir. 1974), sets broad guidelines to be followed by lower courts in determining if state action exists. The prestige of the Second Circuit Court will assure that its decision will be cited often by lower courts outside the circuit as well as by other circuit courts.

The Reverend Donald L. Jackson, a black man, brought suit against private charitable foundations under 42 U.S.C. §1981, 1983, and 1985, alleging racial discrimination against himself, his children, and his foundation. The gravamen of his complaint was that these private charities refused to (1) hire Reverend Jackson as a director of their foundations, (2) give scholarships to his children, and (3) grant money to his foundation, all for reasons of race. The district court for the Western District of New York dismissed the complaint on the pleadings, and Reverend Jackson appealed.

In reversing and remanding the case, the circuit court set guidelines for determining whether a private charity was involved in state action, under 42 U. S. C. §1983, and whether, therefore, the plaintiff had standing to sue under 42 U. S. C. §1981. The plaintiff contended that the defendant-charities' tax exempt status constituted aid and approval of the charity by the state, and so insinuated the state into the affairs of the foundations as to yield state action. The court attempted to limit its holding to cases where racial discrimination was at issue, but definitive guidelines set by the court have a broader application.

The court listed five factors that it considered particularly important to a determination of state action:

(1) The degree to which the "private" organization is dependent on government aid;

(2) the extent and intrusiveness of the governmental regulatory scheme;

(3) whether that scheme connotes governmental approval of the activity or whether the assistance is merely provided to all without such connotation;

(4) the extent to which the organization serves as a public function or acts as a surrogate for the state.

(5) whether the organization has legitimate claims to recognition as a "private" organization in associational or other constitutional terms [ibid., p. 629].

The court noted that each of these factors was material, but that no one factor was conclusive.

The court found that the defendant foundations no doubt received substantial assistance in the form of tax exemptions, without which they could not sustain current programs at anywhere near their present levels. In fact, the court stated that "absent these exemptions, these foundations would never have been established" (ibid., p. 630).

In looking at the extent and intrusiveness of the governmental regulatory scheme, the court examined the provisions of the Tax Reform Act of 1969 (26 U.S.C. §§4940, 4947, 1969). That act requires tax-exempt foundations to file an annual information return with the IRS, disclosing sources of funding and monies spent (ibid., §6056); to publish a newspaper notice that the return is available for public inspection (ibid.,§ 6104); to pay an excise tax to fund the IRS enforcement of the act (ibid., §4940); and to include provisions in their charters that expressively require adherence to the substantive limitations on foundation activities provided for in the act (ibid., §508). The court stated that the most relevant of the substantive limitations was §4945, which provides that grants to individuals must be awarded in an "objective and non-discriminatory manner."

The court then distinguished the holding in Moose Lodge (supra), that tax exemptions are a minimal form of government approval, such as police or fire protection. An organization must apply for exempt status, and "the acts of application and approval are not value neutral. In effect the government would appear to be certifying that every foundation on its tax-exempt list is laboring in the public interest"(ibid., p. 633).

There are no constitutional claims recognized by the court that the private foundations can assert to avoid a finding of state action. In distinguishing Burton v. Wilmington Parking Authority (supra), the court pointed out that while the foundations did not hold themselves open to all but a few as did the Eagle Restaurant, neither were they private associations whose social contacts may be protected by the First Amendment to the United States Constitution. If any rights were involved, it may have been the right to dispose of one's own property as one chooses, "yet it is well settled that one cannot dispose of property in a racially discriminatory manner and entangle the state in the process (Evans v. Newton (1966)" (ibid., p. 634).

Finally, the court looked at the "public function" test, and pointed out that the government grants tax exemption in the expectation that it will be compensated for revenue lost due to the exemption by performance by the exempt organization's performance of functions that the government would otherwise be required to perform (ibid., p. 634). As with its other tests, the court appeared to affirm that the defendant foundations performed a public function.

Judge Friendly began a scathing dissent by stating that the majority opinion was "analytically unsound, dangerously open-ended, and at war with the controlling precedent both in the Supreme Court and in this circuit. Indeed, with all deference, it seems to me the most ill-advised decision with respect to 'state action' yet rendered by any court and unless corrected will be the source of enormous damage to the great edifice of private philanthropy which has been one of the country's most effective and admirable features" (ibid., p. 636-637).

The dissent continued to question each of the tests used and affirmatively answered by the majority opinion. Judge Friedly pointed out that the tax exemption, broadly available, was never before thought to impose a governmental imprimatur sufficient to convert the private organization into a de facto arm of the government. He cited Walz v. Tax Commission 675 (1970) as holding that "an exemption or other tax benefit, available to a wide range of institutions, has always been regarded as the least possible form of government support" (ibid., p. 639).

As to the argument that state regulation equals state action, Friendly cited Powe v. Miles (supra, at 81) and Moose Lodge (supra, at 176-177) as controlling opinions that rejected extensive governmental regulation as an element of state action. Likewise, in duscussing the public function test, Judge Friendly stated that "Private charitable foundations are light years away from the 'company town' analysis

of Marsh v. Alabama . . . and Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc. . . ." (ibid., p. 639). Judge Friendly made two important points on the public function test in his dissent. First he noted that this court in Wahba v. New York University, (2nd Cir. 1974 at 102), recognized the "value of preserving a private sector free from the constitutional requirements applicable to governmental institutions." Second, he pointed out that the majority quoted with approval the conclusion of the Peterson Commission that the "new rationale views foundations as more efficient than government in that foundations can be more flexible and more innovative" (ibid., p. 640) because of bureaucratic restraints on government, and yet that the majority saw no contradiction in striving to include foundations under those same constraints (see Mangum and Hendrickson (1975, p. 628-633).

Finally, Judge Friendly pointed out that the guidelines established in the majority opinion would likely not be reviewed by a higher court even after remand to the district court and would become precedent:

> The implications of this decision for instiutions receiving tax benefits of various sorts are staggering. Simply because of tax exemptions, private social agencies, community centers, institutions of higher education, homes for the young and the aged, endowed by private donors for the sole or preferential benefit of particular creeds or races must open their doors equally to all, with every decision subject

> to judicial re-examination, even though this may impair or destroy the very purpose which lead the donor to endow them. Beyond this if the tax exemption given to charitable foundations converts their giving into government action, I see no really tenable basis for distinguishing the tax deductions allowed individuals and corporations [ibid., p. 638].

His fears on this point were borne out when the district court, on remand, dismissed the Reverend Jackson's complaint for failure to comply with certain requirements of federal rules relating to court procedure (Jackson v. The Statler Foundation (W.D.N.Y., filed July 18, 1975). There has been no reported appeal of the dismissal so that the circuit court decision became precedent. To further amplify the importance of Jackson v. The Statler Foundation, the U.S. District Court for the Eastern District of Pennsylvania in the Third Circuit, has recently handed down a decision that, based on the tests enumerated in Jackson, finds state action on the part of a private university.

Rackin v. University of Pennsylvania (E.D. Pa. 1974), involved a suit brought under 42 U.S.C. §1983 by a female professor at the University of Pennsylvania, who claimed that she had been denied promotion and tenure for reasons of sex discrimination. The court began its discussion of the state action claim by citing the five tests enumerated in Jackson v. The Statler Foundation (ibid., p.996). With those tests in mind, the court considered nine areas of contact

between the State of Pennsylvania and the university.

1. Background of university and commonwealth relations. The university was created by the union of the College, Academy and Charitable School of Philadelphia, a private school, and the University ofthe State of Pennsylvania, which was established by the state legislature. The Act of September 30, 1791, which incorprated the new university, requires that the school annually submit a financial report to the legislature and appointed the governor as president of the trustees.

2. Commonwealth appropriation to the university. The university is a "state-aided" university that has since 1903 received appropriations regularly from the general assembly for general maintenance. These appropriations represent approximately 7 to 10 percent of the university's operating budget. The court noted that the university actively sought increased appropriations each year, and had even given preference to residents of Pennsylvania for admission to its medical, dental, and veterinary schools. In addition the court found significance in the alumni committees established by the university throughout the commonwealth to influence legislators to maintain the university's status as "the only major independent institution of its kind in the country to receive an essential fraction of its income from a state" (ibid., p. 998).

3. State Construction, Leasing and Financing of Buildings for the University. The court noted that since 1955 the general state authority (GSA) had been authorized to assist state-aided institutions to finance large-scale capital improvement. In order to secure assistance, the institution was required to convey title to the property to the GSA in such a way as to amortize the cost of construction. In 1967, the legislature created the Pennsylvania Higher Educational Facilities Authority (PHEFA), which took title to financed buildings and issued tax exempt bonds to finance construction. Both of these agencies assisted the University of Pennsylvania to finance buildings on its campus.

4. Federal Construction Grants and Contracts. The court realized that the $16,000,000 in construction grants received by the university did not bear directly on the issue of state action. But it noted that the university had received a guaranteed mortgage and grants under Title I of the Higher Education Facilities Act of 1963, 20 U.S.C. §§701-721, and the Hill-Burton Act of 1964, 42 U.S.C. §291 et. seq. The Commonwealth and the federal government jointly administer the Hill-Burton program, and no institution may receive aid under the program unless a state-designated agency approves and recommends the project.

5. Public funding of university research project. The court pointed out that the university received primary support for its research from the federal government, some of which support was

funneled through the state. In addition, the commonwealth has supported research through direct grants to the school.

6. Tax exemption and benefits. The decision merely noted that tax benefits to the university exceeded $5,000,000 in 1973.

7. Scholarships and loan aid. Pennsylvania residents who are undergraduates at approved institutions in the commonwealth may apply for financial aid to the Pennsylvania Higher Education Assistance Agency (PHEAA), 24 P.S. §5101 et seq. If the applicant is successful, payment is made by PHEAA directly to the institution in the name of the recipient. To alleviate the depletion of its own financial aid resources, the university requires its students to first apply to PHEAA for aid.

In addition, the university participates in the State Senatorial Scholarship Program. In this program each state senator and the commonwealth lieutenant governor is entitled to grant six four-year scholarships to Pennsylvania residents who are accepted to the university.

8. University Agreement with the City of Philadelphia Redevelopment Authority. "Under Pennsylvania law, 35 P.S. §1701 et seq., the redevelopment authority is empowered to purchase and acquire land, to clear buildings thereon, to exercise the right of eminent domain, and to convey to others and to enter into agreements with others for the purpose of redevelopment of the lands and buildings" (ibid., p. 1001). The university acquired land from the redevelopment authority

and agreed that it would not discriminate in the use, sale, or lease of this land on the basis of religion, race, color, or national origin.

9. Specific Commonwealth Concern Regarding Discrimination in Education. The University of Pennsylvania gathers data for the Higher Educational General Information Survey (HEGIS) that is used by state and federal agencies to determine comparability of salaries for females and members of minority groups. The legislature of Pennsylvania has declared the Commonwealth's policy to be that "all persons shall have equal oportunities for education regardless of their race, religion, color,ancestry or national origin, 24 P.S. §5002 (a)" (ibid., p. 1002).

After exhaustively labeling the contacts between the university and the state, the court considered the substance of the state action claims. The court distinguished the holding in Moose Lodge--that the court find state action only if there were a nexus between the state involvement and the action complained of by the private person--by reasoning that the Supreme Court did not foreclose other methods of proving state action. In Moose Lodge, the Court distinguished Burton v. Wilmington Parking Authority, on the ground that in Burton there was no nexus between state action and private conduct, but that the parking authority has "so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity" (Moose Lodge, supra, at 725). In this distinction, therefore, the district court saw a completely

separate test for state action. This test is the same one alluded to by Justice Marshall in his dissent to Jackson v. Metropolitan Edison Company (supra, at 370). The Rackin court, after reviewing the totality of contacts between Pennsylvania and the university, found a symbiotic relation between the two that rendered state action in all acts of the university, regardless of the existence of a nexus between a particular challenged act and the state intrusion.

> This symbiosis becomes readily apparent when one considers the give and take relationship which has developed between the University and the Commonwealth principally because of the University's substantial financial dependence upon the Commonwealth. Each participant enjoys the mutual benefits derived from their relationship. The Commonwealth, by aiding the University, has enabled the residents of Pennsylvania to continue to take advantage of the multitude of opportunities available from a major university. Commonwealth funds, on the other hand, in the form of less expensive and rent-free educational facilities for the University's primary learning centers, annual appropriations, tax exemptions, scholarships, and research projects are filtered throughout the entire University to all facets of the educational process. If the source were to run dry, the University's

> operations and status would suffer irreparably to the point where it could no longer compete as an educational institution of national prominence. The Commonwealth, in effect, maintains a stranglehold on the University and therefore potentially has significant input into University policies [Rackin, supra, p. 1004-1005].

In reaching its holding the court cites the opinion discussed in Braden v. University of Pittsburgh, (supra), without alluding to the distinction between a "state-related" institution in Braden, and a "state-aided" institution in Rackin. The court also dismissed the several cases discussed above that found that various specific contacts with the state did not yield state action.[13] Finally, the court distinguished the holding in the circuit court decision in Jackson v. Metropolitan Edison Company, (supra), that the state must be financially dependent upon the private entity to yield state action, by stating that financial benefit to the state only one of several factors to be sifted and weighed (ibid., p. 1004).

The Rackin case was not appealed, and it too has become precedent for those courts that follow the broad-sweep approach to the question of state action. While neither Jackson v. The Statler Foundation nor Rackin v. The University of Pennsylvania carry the weight of a Supreme Court decision, they, with Justice Marshall's dissent in Jackson v. Metropolitan Edison Company, indicate a trend

in the case law away from a point-of-contact approach to state-private relationships, and toward a cumulative analysis of state action. As will be shown in the next chapter, statutes indicate numerous contacts between states and private higher education, and the master plans indicate a trend toward an ever-increasing number of contacts and support from the state to private institutions. It is the indiscriminate increase of these contacts, culminating in a reliance by the state on the private sector that when coupled with the trend in case law, increases the likelihood of the state action doctrine being applied to private higher education.

Several contacts, outlined in Jackson, (supra) and discussed above, exist in all of the states. These contacts are the laws governing chartering or incorporation and those governing tax exempt status. The courts have ruled, however, that chartering and incorporation is a ministerial government action that by itself does not promote or manage a corporation. Chartering by itself does not yield state action.

Tax exemption has been held to be the least form of governmental involvement in the context of the First Amendment to the United States Constitution. In Jackson v. The Statler Foundation, however, the court found that, since the tax-exempt status is a benefit granted by the state, it must be considered in finding state action. Since all states exempt private, nonprofit corporations from taxation, the first test of Jackson has already been met. In the following chapters

we have categorized the nature of the interdependent relationships existing in each state between private institutions and the state. The four categories should be read with the existence of the exemption in mind.

Footnotes

[1] E.g., Fiske v. Kansas, 274 U. S. 380 (1927) (First Amendment); Mapp v. Ohio, 367 U.S. 643 (1961) (Fourth Amendment); Mallory v. Hogan, 378 U.S. 1 (1964) (Fifth Amendment); Gideon v. Wainwright, 327 U.S. 335 (1963) (Sixth Amendment); and Furman v. Georgia, 408 U.S. 238 (1972) (Eighth Amendment).

[2] Adickes v. S. H. Kress and Company, 398 U.S. 144. 169 (1970). This principle has also been followed in U.S. v. Price, 398 U.S. 787 (1966); Evans v. Newton. 382 U.S. 296 (1966); U. S. v. Williams. 341 U.S. 70 (1951); and Civil Rights Cases, 109 U. S. 3 (1883).

[3] Burton v. Wilmington Parking Authority, 365 U. S. 715, 722 (1960); Evans v. Newton, 382 U.S. 296 (1966); Shelley v. Kraemer. 334 U. S. 1 (1948); and Cooper v. Aarons, 358 U.S. 1 (1958).

[4] See also, Silver v. New York Stock Exchange, 373 U.S. 341 (1963); Terry v. Adams, 345 U.S. 461 (1953); and Smith v. Allright, 321 U.S. 649 (1944).

[5] Citing Nixon v. Conden, 286. U. S. 73 (1932) (election); Terry v. Adams, 345 U.S. 461 (1953) (election); Marsh v. Alabama, 326 U. S. 501 (1946); and Evans v. Newton, 382 U.S. 296 (1966).

[6] E.g., Dehann v. Brandeis University, 150 F. Supp. 626 (D. Mass. 1957); Carr v. St. John's University, New York, 17 App. Div. 2d. 632, 231 N.YS. 2d. 410 1962); People v. Northwestern University, 333 Ill. App. 224, 77 N.E. 2d 345 (1948), cert. denied 335 U.S. 829

(1948); Anthony v. Syracuse University, 224 App. Div. 487, 231 N.Y.S. 435 (1928); Stetson University v. Hunt, 88 Fla. 510, 102 So. 637 (1925); Samson v. Trustees of Columbia University, 101 Misc. 146, 167 N.Y.S. 202 (1917); Gott v. Berea College, 156 Ky. 376. 161 S.W. 204 (1913); and Booker v. Grand Rapids Medical College, 156 Mich. 95. 120 N. W. 589 (1909).

[7] Citing Norton v. McShane, 332 F. 2d. 855. 862 (5th Cir. 1964), cert. denied, 389 U.S. 981 (1965); and Sigire v. Texas Gas Transmission Corporation, 235 F. Supp. 155 (W.D. La. 164) aff'd. 354 F. 2d. 40 (5th Cir. 1965).

[8] E.g., Grossner v. Trustees of Columbia University, 287 F. Supp. 535 (S.D.N.Y. 1968); Blackburn v. Fisk University, 443 F. 2d. 121 (6th Cir. 1971); Brown v. Mitchell, 409 F. 2d. 593 (10th Cir. 1969); Rowe v. Chandler, 332 F. Supp. 336 (D. Kan. 1971); compare Jackson v. The Statler Foundation (supra).

[9] E.g., Greenya v. George Washington University, 512 F. 2d, 556 (D.C. Cir. 1975); Furumoto v. Lyman, 362 F. Supp. 1267 (1971); Powe v. Miles, 407 F. 2d. 73 (2nd Cir. 1969); Rowe v. Chandler, 332 F. Supp. 336 (D. Kan. 1971), accord, Moose Lodge No. 107 v. Irvis, 40 U. S. 163 (1972); Gurthrie v. Alabama By Products Company, 328 F. Supp. 1140 (.N.D. Ala. 1970); Mulvihill v. Julia L. Butterfield Memorial Hospital, 329 F. Supp. 1020 (S.D.N.Y. 1971).

[10] Grossner v. Trustees of Columbia (supra), note 8, Blackburn v. Fisk University (supra), note 8; Brown v. Mitchell (supra), note 8; Powe v. Miles, 407 F 2d. 73 (2nd Cir. 1968); Rowe v. Chandler (supra), note 8; Counts v. Voorhees College, 439 F. 2d. 723 (4th Cir. 1971); Torres v. Puerto Rico Junior College, 298 F. Supp. 458 (D. P. R. 1969); Guillory v. Tulane University (supra), (212 F. Supp. 674 Ed. La 1962), especially note 10; compare Jackson v. The Statler Foundation (supra), note 8.

[11] E. g. Coleman v. Wagner College, 429 F 2d. 1120 (2nd Cir. 1970); Blackburn v. Fisk University, 443 F 2d 121 (6th Cir. 1971); Counts v. Voorhees College, 439 F. 2d 723 (4th Cir. 1971); McLeod v. College of Artesia, 312 F. Supp. 498 (D.N.M. 1970); Torres v. Puerto Rico Junior College, 298 F. Supp. 459 (D.P.R. 1969); Guillory v. Tulane University (supra), note 43. Contra Ryan v. Hofstra University, 67 Misc. 2d 651, 324 N.Y.S. 2d 964 (1971).

[12] E.g., Wahba v. New York University, 492 F. 2d 96 (2nd Cir. 1974); Greenya v. George Washington University, 512 F. 2d. 556 (D.C.Cir. 1975), and Grossner v. Trustees of Columbia University, 287 F. Supp. 535 (S.D.N.Y. 1968); Counts v. Voorhees College, 439 F. 2d. 723 (4th Cir. 1971); Powe v. Miles, 407 F. 2d. at 80.

[13] Tax Exemptions: Blackburn v. Fisk University (supra), note 8; Browns v. Mitchell (supra), note 8; Furumoto v. Lyman, 362 F. Supp. 1267 (N. D. Cal. 1971); McLeod v. College of Artesia (supra), note 10. Scholarships and loans: Brownley v. Gettysburg College, 338 F. Supp. 725 (M.D. Pa. 1972); Torres v. Puerto Rico Junior College (supra), note 10. Government support of research project: Wahba v. New York University (supra). Contacts with city: Grafton v. Brooklyn Law School, 478 F. 2d. 1137 (2nd Cir. 1973). Construction, leasing, and financing of buildings: McLeod v. College of Artesia (supra), note 10.

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Category I: Minimal Involvement

Arizona, Arkansas, Colorado, Hawaii, Montana, New Mexico, Wyoming

As Table I indicates, these states provide no financial aid to students attending private institutions or to private institutions themselves. All the states grant tax-exempt status to private institutions. Four have certification programs of a quantitative nature, and two require private institutions to file annual reports. Four coordinate only the public sector, while three consider issues involving private higher education. In master-planning, three have no plans, one plans for the public sector only, and three consider private higher education in public sector plans. Colorado appears to be moving out of this category, with planning recommendations involving aid programs for the private sector and consortium arrangements to eliminate waste and duplication.

The Meaning of "Private"

The private sector in these states could be best characterized as having minimal contacts with the state. Although the state is aware of the existence of the programs offered in the private sector, it makes little effort to utilize them. Their tax-exempt status and state licen e do not minimize the private nature of these institutions any more than state licensure of doctors results in their being agents of the state. Licensing is a means to protect the public from fraud, not to control the nature of the institution's missions.

Little note is taken of the existing programs in the private sector when planning for the state system, and the private sector operates apart from the state system of higher education. While private institutions are not involved in state programs, however, they may be heavily involved in federal projects. Therefore, except for Colorado, "private" higher education in these states means independence from state control, coordination, or planning with respect to programs, institutional missions, and utilization of facilities.

Arizona

Summary, Arizona has 15 public and 6 private institutions of higher education, (U.S. Department of Health, Education, and Welfare, 1975, p. xxii), and approximately 3 percent of its students are educated in private institutions (idem, 1975a, p. 70). The board of regents is responsible for all public institutions in the state (Ariz. Rev. Stat. §15-721-748, 1971, Ariz. Const., Art. 2). It has no master plan. The governor has created the Arizona Commission for Postsecondary Education, which is responsible for planning in the public and private sectors.

Statutory Law

The state's corporation act recognizes private corporations formed for the purposes of religion, charity, benevolence, socialibility, learning, or for profit, and the act governs generally the formation of such corporations (Ariz. Rev. Stat. §10-102, 1975) and consists of eight members appointed by the governor and two ex officio members, with no representation for the private sector. The statute does not mandate, and the board has not developed, a master plan.

Table 1.

Minimal Involvement - No aid to private sector students or private institutions.

	#1 Private Sector Dependence on the State																#2 Involvement of State Regulatory Scheme		#3 Regulatory Scheme Commotte Approval		#4 Public Function Argument								#5 Coordination By A State Agency								#6 Master Plan or Planning Document							
	Benefits				Student Aid						Aid To Institution									Qualitative																								
	Tax Exemption	Eminent Domain	No Aid - Constitution	Purchases Thru State	Loans: Public & Private	Loans: Private	Grants: Public & Private	Grants: Private	Schl.: Public & Private	Schl.: Private	Direct Grants	Capitation Grants	Program Grants	Facilities Grants	Loans or Bonds - Facilities	Contracts for Services	Certification or Licensing	Annual Reports Required	Quantitative - # Fac., Admin., Bldg., Act. of Money	Qualitative - Quality of Progrm	To Facilitate Academic Transfer	Relying on Private Sector to Educate ? Stat.	Relying on Private Sector to Educate ? Plan	Function of Private Sector in Public Interest: Stat.	Function of Private Sector in Public Interest: Plan	Contracts for Services: Stat.	Contracts for Services: Plan	Cooperative or Consortia Agreements: Stat.	Cooperative or Consortia Agreements: Plan	Language - State Responsibility to Insure Private Sector Survival: Stat.	Language - State Responsibility to Insure Private Sector Survival: Plan	No Coordinating Body	Public Only	Public - Considers Private to Avoid Duplication: Stat.	Public - Considers Private to Avoid Duplication: Plan	Public - Private Voluntary: Stat.	Public - Private Voluntary: Plan	Public - Private Mandatory: Stat.	Public - Private Mandatory: Plan	No Master Plan	Public Only	Public - Considers Private - Avoid Duplication: Stat.	Public - Considers Private - Avoid Duplication: Plan	Public & Private Voluntary: Stat.	Public & Private Voluntary: Plan	Public & Private Mandatory: Stat.	Public & Private Mandatory: Plan
Ariz.	X																														X						X					X
Ark.	X																															X							X				
Colo.	X		X		X												X	X	X			X		X				X					X								X			
Hawaii	X																X		X													X							X					
Mont.	X		X														X		X														X								X		X	
N.Mex	X																X	X	X														X											
Wyo.	X				X																											X											
																																X											

a 13. Master plan
b 14. 1202 Commission

Property used for school and educational programs is exempt from property taxation (idem. §42-27, 1975), and educational corporations are exempted from income taxation (idem,§43-147, 1972).

In addition to the board of regents, the governor, pursuant to the Higher Education Act of 1965, has created the Arizona Commission for Postsecondary Education, which does include representatives of private institutions. This commission serves as the state agency designated to receive and coordinate the distribution of federal facilities funds, but its purpose can be conceived of as exceeding that limited purpose. One of its purposes is

> to conduct studies and planning required to develop comprehensive inventories of, and studies with respect to, all public and private post-secondary educational resources in the State, including planning necessary for such resources to be better coordinated, improved, expanded, or altered so that all persons within the State who desire, and who can benefit from postsecondary education may have the opportunity to do so [Executive Order 74-5, dated April 23, 1974].

The commission includes representatives of private institutions; but so far the commission has produced no reported plan.

Master Plan

Although the board of regents has not developed a master plan, it did produce a long-range plan, among whose recommendations was one for annual surveys of space utilization of postsecondary educational facilities within the state, including public and private two- and four-year colleges and unversities (Board of Regents, 1974, p.4).

Arkansas

Summary. There are 11 private and 8 public institutions of higher education in Arkansas (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions educate 16 percent of the state's student population in higher education (idem, 1975a, p.70). The state board of higher education regulates only public higher education in the state, and its master plan relates solely to public institutions.

Statutory Law

Under the state's corporation laws, corporations may be organized for educational purposes (Ark. Stat. 1947, §64-1901, 1963). The Arkansas Board of Higher Education certifies all correspondence courses offered in the state, and educational institutions are prohibited by law from advertising (idem, 80-143, 1963).

The state board of higher education was established in 1971 to "promote coordination in the development and operation of the higher educational program of this state (Ark. Act 287, 1971; Ark. Stat. 1947, §80-3349, 1971).

School buildings, libraries, and their grounds are exempt from taxation if used exclusively for school purposes (Ark. Const. Art. 16 §5).

Master Plan

The master plan developed by the state board of higher education, while referring statistically to private institutions of higher education, deals only with the planning and coordination of public institutions (Department of Higher Education, n.d., pp. 5153).

Colorado

Summary. Colorado has 21 public and 12 private institutions of higher education (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector educates approximately 11 percent of the state's students in higher education (idem, 1975a, p.70). The Colorado Commission on Higher Education is charged with the coordination of all public and private postsecondary education in the state. In 1975, the commission was in the process of developing a master plan, and it had published working papers on the relationship of the private sector to the state.

Statutory Laws

Educational corporations may incorporate under the Colorado not-for-profit corporation laws; may be formed by any two or more persons; shall have powers similar to other corporations organized not for profit; and, if maintaining an institution of the grade of a university, may confer degrees usually conferred by universities (Colo. Rev. Stat. §31-20-1 et.seq., 1963). No educational institution may offer a degree

unless it requires a high school diploma as a prerequisite to admission and unless a majority of credits in any program are accepted by an accrediting agency (idem, §124-21-1, 1965).

The Colorado Commission on Higher Education was established in 1965 to

> develop and recommend plans for higher education, and maintain a comprehensive plan for public higher education with due consideration of the needs of the state, the role of the individual public and private institutions in the state and the ability of the state to support public higher education. Such plans shall include. . . the establishment of such relationships with private institutions of higher education as may strengthen the total higher education resource of the state [idem, §124-22-1, 1965].

Corporations and associations organized exclusively for educational purposes may be exempted from income taxation (idem, 138-1-8, 1963), and all real and personal property used solely for schools, other than schools conducted for private or corporate profit, shall be exempt from taxation (idem, §138-2-1, 1963).

The Colorado Constitution provides that "no appropriations shall be made for educational purposes not under the absolute control of the state" (Colo. Const. Art. 5, §34, 1953; Art. 9, §7, 1970).

Consequently, there are currently no financial assistance programs to private institutions of higher education or to their students. An amendment to the constitution in 1972 authorized a state loan program to Colorado students in any institution of higher education, but no implementing legislation has been adopted (idem, Art. 11, 2a, 1972).

Master Plan

The Commssion on Higher Education began developing a statewide master plan in January 1975. No master plan has yet been adopted, but task forces established by the commission have issued preliminary reports. The first report of the Task Force on the Private Sector, issued in November 1974, deals extensively with recommended relations with the private sector. The report addresses itself, however, to only five private, four-year institutions of higher education.

The task force began its deliberations with several determinations, among which was:

> 1. Together with the state's twenty-one public colleges and universities, the five accredited private non-profit institutions of higher education in Colorado comprise a dual system of higher education in the state whose combined resources are not presently utilized to the maximum educational benefit of the people of Colorado [Task Force, 1974, p. vi].

The task force stated that "nowhere in its legislative or other recommendations . . . does the Task Force propose any assumption by the state of either responsibility for, or control of, any institution in the private sector . . . . The Task Force was designed particularly to study possible ways and means to utilize the existing private colleges and universities within the state to the ultimate advantage of the whole, to enhance the entire higher educational well-being of the state and, more important, to make more available to the people of the state its total and diversified resources, both public and private, at a reasonable and affordable cost to the state and to the individual consumers" (Task Force, 1974, pp. ix, 23).

The recommendations are divided into three categories: legislative, policy procedural proposals, and other action proposals. Among the legislative proposals are recommendations for statutory authority for the Colorado Commission on Higher Education to contract with private colleges for educational services; statutory authority for need-based and no-need student grants to Colorado residents attending Colorado private colleges; statutory authority for the commission to match federal funds for student loans made at Colorado's private colleges; and statutory authorization for state financed work-study programs at private institutions (ibid., Recommendations, pp. 1-3). In the policy/procedural proposals, the task force recommended extension of cost savings in purchasing to private institutions; a review of programs offered in the private sector

before the development of new state programs; and utilization of private-sector facilities by the public sector where appropriate (ibid., Recommendations, pp. 4 and 5). The other proposals include recommendations to develop referral programs, whereby students who cannot be accommodated in public institutions are advised of opportunities in private institutions, and to continue to explore and develop all appropriate means of joint planning and cooperation between the public and private sectors (ibid., Recommendations, pp. 5 and 6).

Hawaii

Summary. Hawaii has four private and nine public institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Students in private higher education equal 7 percent of the total enrollment in Hawaii's postsecondary education system (idem. 1975a, p. 70). The Board of Regents for the University of Hawaii controls those institutions in the public sector (Hawaii Rev. Stat. §26-11, 1964; §306-1, 1971; §§306-2, 1971). Under the board of regents, the State Postsecondary Educational Commission, composed of members from both the public and private sector, coordinates the receipt of federal money (idem., §305-H, 1974). The state's master plans deal with the public sector.

Statutory Law

The laws of Hawaii govern the formation of non-profit corporations including educational corporations (idem., §416-2 et seq., 1955). All colleges in Hawaii are exempt from property tax (idem., §246-32B, 1967). However, private colleges are not given eminent domain

powers (idem, §101-2, 1951). The state has the following regulations governing the awarding of degrees: Educational institutions may issue degrees if they are accredited by an educational agency, an accrediting agency, if they receive program approval from three accredited institutions (idem, §246D-2 to 15, 1974).

Montana

Summary. This state has nine public and three private institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Montana's private institutions enrolled 5 percent of the student enrollment (idem, 1975a, p. 70). The Board of Regents of Higher Education supervise and coordinate public higher education within the state (Mont. Ann Stat. §75-8501 to §75-8511, 1971). The state's master plan deals primarily with public institutions but does consider some aspects of private higher education.

Statutory Law

The not-for-profit corporation act covers educational institutions within the state (idem, §15-2301 et seq., 1967). Property used for educational purposes is exempt from taxation (idem, §84-202, 1967). An institution must have regent approval before awarding a degree or literary honors unless the institution has been accredited by a regional accrediting association (idem, §75-8502, 1971. House Bill 578, (1973) Session), directed the Commission on Postsecondary Education, a 1202 commission, to develop a master plan for higher education in Montana.

Master Plan

The plan, entitled Final Report was published in 1974 and lists several long-range goals that have an impact on the private sector. One is the development of a comprehensive system of postsecondary education that will meet the needs of the citizens of the state (Montana Commission on Postsecondary Education, 1974, p. 13). Another is "coordination and planning to assure diversity, comprehensiveness, and cooperation between units and systems of postsecondary education and protection of the public interest (ibid., p. 14).

The plan recommends that private colleges be encouraged to participate in planning and programs to facilitate transfer between institutions, to monitor manpower needs, and to inventory financial assistance programs (ibid., pp. 20, 21). Private institutions should also be invited to participate in the orderly growth and development of adult and continuing education within the state (ibid., p. 23). The planning process needs to be effective and therefore comprehensive; this cannot be achieved unless information regarding the private sector is included (ibid., p. 35). Finally, student financial assistance programs should be made available to students attending the private institutions within the state (ibid., p. 45). According to the report, this recommendation will probably require a constitutional amendment.

New Mexico

Summary. This state has eight public and three private postsecondary education institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 9 percent of the total enrollment in New Mexico institutions (idem, 1975a, p.70). The Postsecondary Educational Commission, a 1202 commission, is responsible for planning for both the public and private sectors of postsecondary education (N.M. Stat., §51-14-36, 1957). This state has no master plan.

Statutory Law

The nonprofit corporate statutes govern the establishment of nonprofit educational corporations, among others (idem, §51-14-20 et seq., 1957). Educational corporations incorporated under this law are given the authority to confer degrees or literary honors usually conferred by this type of institution (idem, §51-14-36, 1957). The state board of education is directed to establish "standards for the operation" of public and private educational institutions and to certify institutions meeting those standards (idem, §77-2-2, 1967). The state's public and private educational institutions are required to submit annual reports to the state board of education (idem, §77-2-6, 1953).

The Postsecondary Education Commission was established to perform a planning function for the state's postsecondary educational institutions (idem, §§73-44-1 to 9, 1973). The planning and recommendation function includes the areas of facilities, program review, and

coordination of activities (idem, §73-44-5, 1973). Specifically, the commission planning acitivities are to include an "analysis of the most effective means of utilizing all existing institutions and programs to meet the present and projected needs for the various types of postsecondary education" (idem, §73-44-5(d), 1973).

New Mexico nonprofit educational institutions are exempt from taxation (N.M. Const. Art. Viii §3, 1914). The state provides no financial aid to students attending private institutions or directly to the private institutions.

Wyoming

Summary. Wyoming has eight public institutions of higher education within its borders. There are no private institutions (U.S. Department of Health, Education,and Welfare, 1975, pxxii). The state does not have a master plan for higher education.

Statutory Law

The laws governing the formation of educational corporations are similar to other states (Wy. Stat. Ann., §17-123 to 17-137, 1949). The act allows for the establishment by the institutions of reasonable rules governing the students in attendance (idem, §17-133, 1945). Educational corporations are exempt from property and inheritance tax (idem, §17-35, 1947), or sales or use tax (idem, §39-292, 1945), and property tax on property for educational purposes (idem, §39-10, 1955). Wyoming sponsors a Higher Education Loan Plan and Fund for students who are citizens of the state (idem, §21-108.1 to 108.19, 1973).

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Category 2: Financial Aid to Public and Private Sectors

Idaho, Mississippi, Missouri, Nevada, North Dakota, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin

The distinctive characteristics of these states, as indicated by Table 2, is that they have financial aid programs for students attending public and private institutions. Such programs include loans to students in eight states, grants to students in five states, and scholarships in five states. Financial aid is provided to private institutions through loans and bonds for facilities in one state and eminent domain powers in another state. Under regulation of educational corporations, six of the states certify degree programs that are quantitative in nature. One state lists interinstitutional transfer of credit as a reason for the certification process. Two states require annual reports from private institutions either on new programs or because they receive financial aid.

Coordination of the state's higher education system ranges from no coordination in one state, coordination of the public sector only in five states, coordination of issues in the private sector in coordinating the public system in four states, and voluntary participation of public and private institutions in two states. Six states are not involved at all in master planning, two states plan only for the public sector, while four states consider issues in the private sector in developing plans for the public sector.

Two states, Missouri and Washington, may be moving into a higher degree of contact with the state. Both states' master plans propose that: the private sector functions in the public interest; the state relies on the private sector to enroll a percentage of the state's citizens in higher education; the state should form consortiums and cooperative agreements between public and private higher education (see also West Virginia); and the state should ensure the survival of the private sector (see also Rhode Island). Washington also advocates contracts with private institutions. Missouri's statutory law indicates that the role of private higher education is within the public interest, and its master plan recommends mandatory participation by the private sector in the state's planning process.

The Meaning of "Private"

In these states the public and private sectors have a number of contacts. Aid to students in both sectors is provided. However, these states do not provide aid to institutions for programs to defray operating expenses. The fact that one of the states considers the private institutions as operating in the public interest is significant, but the contacts in this category do not change the essential private character of these institutions.

Aid to students attending private institutions is sometimes mandated to prevent discrimination against those who select private higher education. Such aid would not affect standards for admissions or institutional goals unless the aid were given according to the type

Table 2.

Aid Programs to students at the Public and Private Institutions.

	#1 Private Sector Dependence on the State																		Transparency of State Regulatory Scheme		#3 Regulatory Scheme Connotes Approval		#4 Public Function Argument												#5 Coordination By A State Agency						#6 Master Plan or Planning Document									
	Benefits				Student Aid						Aid To Institution											Qualitative																													
	Tax Exemption	Indirect Foratn	No Aid - Constitution	Purchases Thru State	Loans		Grants		Schl.		Direct Grants	Capitation Grants	Program Grants	Facilities Grants	Loans or Bonds - Facilities	Contracts for Services	Certification or Licensing	Annual Reports Required	Quantitative - # Fac., Admin., Bldg., Amt. of Money	Qualitative - Quality of Program	To Facilitate Academic Transfer	Private Sector to Educate ?		Function of Private Sector in Public Interest		Contracts for Services		Cooperative or Consortia Agreements		Language - State responsibility to insure Private Sector Survival		No Coordinating Body	Public Only	Public - Considers Private to Avoid Duplication		Public - Private Voluntary		Public - Private Mandatory		No Master Plan	Public Only	Public - Considers Private - Avoid Duplication		Public & Private Voluntary		Public & Private Mandatory	
					Public & Private	Private	Public & Private	Private	Public & Private	Private												Stat.	Plan	Stat.	Plan	Stat.	Plan	Stat.	Plan	Stat.	Plan			Stat.	Plan	Stat.	Plan	Stat.	Plan			Stat.	Plan	Stat.	Plan	Stat.	Plan	Stat.	Plan
Idaho	X								X																					X							X										
Mont.	X				X		X											X[1,2]					X	X	X				X												X					X
Miss.	X				X[1,2a]												X		X												X							X									
Nev.	X				X												X		X											X							X									
N.D.	X				X				X[1,2c]																					X							X									
S.I.	X	X[2a]							X								X	X[1,2] XX											X							X									
S.D.	X						X																							X								X								
Penn	X				X																		X		X						X														
Vt.	X						X								X		X		X											X							X									
Wash.	X		X		X		X	X									X		X				X		X			X[2,3]			X										X	X			
Wis.	X				X		X		X														X							X							X									
W.Va.	X				X				X								X		X		X						X				X	X								X			X			

1. Institutions receiving direct state funding
2. Health related programs in the private sector
3. Student aid for disciplines not offered by the state
4. Report new programs for board recommendation
5. Citizens of Indian descent

of program the student enrolls in. For example, if aid were given only to students enrolled in natural science programs, private institutions might be forced to emphasize these programs at the expense of others to attract students who would not otherwise attend their institution because of their high tuition. Most financial aid programs do not discriminate by academic discipline but the current glutted job market in certain occupations could result in such programs being instituted. The possible effect on institutional programs and missions could have significant ramifications on the concept of "privateness."

Except in one case, the states in this category do not involve the private sector in coordination of higher education. These states, however, have some interest in the private sector in their master plans and the right of their citizens to choose an institution in the private sector. A parallel system of instruction in the private sector is not viewed in these states as a dependent unit of the states' system of higher education, but operates as a separate entity. Both Missouri and Washington, however, view the private sector as a contributor to their higher education system. More and more these two states are attempting to preserve the status quo in the private sector because pf the cost of establishing comparable programs in the public sector. Both states also view the private sector as an important aspect of a diversified system within the state. As a result they are considering private-sector problems in plans for the state system of higher education.

Mere consideration of existing programs in the private sector when planning for the state system does not affect the private nature of those institutions; however, programs resulting from such considerations could.

Idaho

Summary. This state has six public and three private postsecondary education institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Of all students enrolled in higher education, 19 percent are enrolled in the private sector (idem. 1975a, p. 70). The state board of education coordinates only the public institutions within the state (Idaho Code, §33-101, 1963). Idaho has not developed a master plan for higher education.

Statutory Law

The laws affecting private higher education are scant. The Idaho Code does designate procedures for establishing educational corporations. The code stipulates that five citizens may form a corporation to establish and maintain a college (idem, §33-3903, 1949). The directors of the corporation have the power to own property, manage the institution; hire, fix salaries, and fire personnel; establish academic requirements; and award degrees or literary honors (idem, §33-3308, 1899). Private institutions and their property are exempt from sales and property taxes (Property tax, Idaho Code, §63-105L, 1961 real estate; sales tax, Idaho Code, §63-3622(a), 1961). Sons or daughters of POWs or MIAs may receive a scholarship if they attend a public or

private postsecondary institution in Idaho (idem, 33-4301, 1972). These scholarships are the only form of financial assistance given to Idaho's private institutions or their students.

Mississippi

Summary. Mississippi has 24 public and 18 private postsecondary institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p.xxii). As calculated from enrollment figures the private sector enrolls 11 percent of the state's students in higher education (idem, 1975a, p. 70). The Board of Trustees of Institutions of Higher Learning coordinates public higher education within the state (Miss. Rev. Stat., §37-101-1, 1942). Although the state is developing a master plan it was unavailable at the time of this writing.

Statutory Law

The law governing not-for-profit corporations applies to education corporations (idem, §79-11-1, 1942). This law requires that the charter be on file with the secretary of state and that the attorney general and the governor shall approve all charters. The income of educational institutions is exempt from taxation (idem, §27-7-15, 1934) along with all property real or personal used for educational purposes (idem, §27-31-1, 1884).

The State Board of Education may accredit non-public schools or non-public schools may form their own accrediting agency (idem, §37-17-7 to §37-17-9, 1942). The Commission on College Accreditation was formed to compile lists of approved colleges and universities (idem, §37-101-

241, 1942). Institutions not having the authority to grant degrees must receive that authority from the commission. Financial aid from the state in the form of loans are available to medical students attending any accredited college (idem, § 37-109-1, 1942).

Missouri

Summary. There are 22 public and 51 private institutions in Missouri (U.S. Department of Health, Education,and Welfare, 1975, p. xxii). Of the total enrollment in postsecondary education, 27 percent is in the private sector (idem, 1975a, p. 70). The Coordinating Board for Higher Education coordinates the system of higher education public and private within Missouri (Vernon Ann. Mo. Stat. §§173.010 to 173.090, 1974). The state's master plan for the seventies dealt with both public and private higher education.

Statutory Law

The state's not-for-profit corporate law regulates the formation of educational corporations (idem, §352.010 to§352.240. 1939). Educational corporations formed under the act have implied powers to grant degrees. Nonprofit educational corporations are exempt from taxation (Mo. Const. Act 10 §6, 1945). More specifically, they are exempt from income tax (Vernon's Ann. Mo. Stat., §143.120, 1951), inheritance tax (idem, §145.100, 1951), tax on motor vehicles (idem, §144.450, 1951), and property tax (idem, §137,100, 1945).

The Coordinating Board for Higher Education was established to coordinate and plan for the state's system of higher education (idem,

§173.010 to §173.190, 1974). As part of its coordinating effort the law requests governing boards of all institutions to submit to the board proposed policy changes which would create new institutions, learning centers or new degree programs for the board's recommendation (idem, §173.030(1), 1974). The board can also recommend to governing boards of institutions, "the development, consolidation, or elimination of programs, degree offerings, physical facilities or policy changes where that action is deemed by the board as in the best interest of the institutions themselves and/or the general requirements of the state" (idem, §173.020(4), 1974). The private sector has one representative on the board (idem, §173-095 to §173.190, 1974). The state also gives direct grants to students in public and private institutions enrolled in nonreligious educational programs (idem, §§173,200 to 173.230, 1974). Awards are based on financial need and ability.

Master Plans

The Second Plan for the Coordination of Higher Education in Missouri for the Seventies was published by the Missouri Commission on Higher Education, 1972. The plan makes several recommendations pertaining to private institutions. First, the plan recommends "the development of a comprehensive coordinated system of higher education both public and private within the state" (p.1); the second, "the use of consortia between institutions in a geographic location to achieve a broadening of educational opportunities while avoiding waste and duplication" (ibid., p.1); third, utilization studies of recommended facilities in both the public and private sectors to achieve the maximum utilization

of facilities without sacrificing quality (ibid., p. 5); fourth, contractual arrangements between public and private institutions to strengthen programs, to achieve efficient facilities utilization, and to avoid duplication (ibid., p. 7); and fifth, that all institutions, public and private, standardize definitions and accounting procedures and make costs for all levels of programs and expenditure classifications available to the commission by June 1973 (ibid., p. 7). Finally, the commission reiterated its rights under the enabling act to monitor new programs and recommend the elimination of unnecessary programs (ibid., p. 7).

Nevada

Summary. Nevada has five public and one private institution (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The state's private institutions enroll 5 percent of the state's enrollment (idem, 1975a, p. 70). The state board of regents for the University of Nevada system coordinates the public institutions within the state (Nev. Rev. Stat., §396-020, 1969). The state's master plan, University of Nevada System Comprehensive Plan, published in 1975, deals primarily with the public sector. Comments regarding private proprietary institutions within the state are not within the purview of this study.

Statutory Law

Nevada'a not-for-profit corporate law covers educational corporations (idem, §§81.290 to 81.340 et seq., 1957). The attorney general of the state has the power to examine the affairs of private institutions (idem, §81.340, 1951). Nonprofit educational corporations are exempt

(Nev. Const. Art 8, §2, 1884), Art. 10 §1, 1884; see also Nev. Rev. Stat., §361.105, 1953). All private institutions in the state must apply for a license and meet standards prescribed by the state board of education (Nev. Rev. Stat., §§394.010 to 394.090 et seq., 1956). The qualifications for a license are set in the following areas: course offerings; facilities; financial status; qualifications of personnel; and operating policies (idem, §394.050, 1956). The state board has the right to inspect the institution (idem, §394-070, 1956) and to revoke a license if there is a violation of the license law, false information on the application, refusal to allow a board inspection, and fraud or deceit (idem, §394.080, 1956).

State financial aid to students is in the form of loans to those attending institutions of higher education within the state (idem, §§ 385.100 to 385.108 et seq., 1969).

North Dakota

Summary. North Dakota has nine public and four private postsecondary education institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions enroll 4 percent of the state's enrollment in postsecondary education (idem, 1975a, p.70). The state board of higher education controls and supervises public higher education within the state (N.D. Century Code Ann., §15-10-01, 1961). The state does not have a master plan for higher education.

Statutory Law

The law governing the establishment of not-for-profit corporations governs those established for educational purposes (idem, §10-24-01, et

seq., 1959). Along with the board of higher education the state has established a commissioner of higher education to administer the state's public sector (idem, §15-10-10, 1961). The Higher Education Facilities Commission is charged with planning for the public sector (idem, §§15-10-29, 1965; 15-29-30, 1967).

All nonprofit corporations organized exclusively for education are exempt from income tax (idem, §58-38-09, 1923). The state has a guaranteed loan program for students enrolled in accredited institutions (idem, §15-62,1-01 et seq., 1969).

The state also has a scholarship program for citizens of Native American descent and scholarship loans for citizens of the state at public or private North Dakota institutions (idem, §15-63-01 et seq., 1963, §15-62-01 et seq., 1963).

Rhode Island

Summary. This state has 3 public and 10 private institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 45 percent of the total enrollment in Rhode Island postsecondary institutions (idem, 1975a, p. 70). The board of regents has governance responsibilities for public higher education and supervisory responsibilities for all postsecondary institutions (R.I. Gen. Laws, §16-49-1, 1973). The board of regents has the responsibility to plan for public postsecondary education. Although Rhode Island does not have a master plan, it does have planning documents dealing with specific areas that have implications for private higher education.

Statutory Law

Rhode Island's not-for-profit corporate law governs the formation of nonprofit educational corporations,among others (idem, §7-6-2, 1966). The law governing educational corporations requires private colleges and universities to file articles of incorporation with the secretary of state, who will not grant a certificate of incorporation until the board of education has reviewed the articles (idem, §§16-40-1 to 16-40-16 et seq., 1951; see §16-40-16). The institution will have authority to grant degrees only if the charter or articles of incorporation specifically grant such authority (idem,§§16-40-2, 1938). Approval of the board of education to grant degrees can be revoked if a hearing shows that the institution is providing inadequate facilities, equipment, or professional staff (idem,§16-40-5, 1951). The board of regents is given the power to enforce the above statutes in place of the board of education (idem,§16-49-4(8), 1973).

The state board of regents is empowered to supervise private higher education in such matters as certification of degree programs (idem,§16-49-4, 1973). The regents are also responsible for developing an information gathering system and planning for all postsecondary education within the state (idem, §16-49-4(1) and (2), 1973). The board of regents is similar to the regents of New York: They have the responsibility of coordinating all education within the state, including the establishment of the Department of Education (idem,§16-49-4(3), 1973). The law also requires public and private institutions "supported wholly or in part by the state" to submit an annual report to the

board of regents (idem, §16-1-6, 1939; see §16-49-4(7), 1973).

Rhode Island provides certain benefits to private institutions. Cities are free to use their eminent domain powers on land they plan to sell to a private educational institution (idem, §45-38-1, 1965). Land (not to exceed one acre), the buildings, and equipment owned by educational corporations are exempt from taxation (idem, §44-3-3, 1967).

The state provides a scholarship program for students enrolled in public or private institutions (idem, §§16-37-22 to 16-37-31, 1951). The state also has scholarships for students in nursing and for those in science and mathematics enrolled in accredited institutions (idem, §16-37-12, 1956; §16-37-13, 1956; §16-37-14, 1958).

Master Plan

In Working Note #2, entitled Toward Equal Educational Opportunity in Postsecondary Education, the board of regents reaffirms the need for financial aid to students to give them freedom of choice in order to maintain the diversity of postsecondary education (Rhode Island Postsecondary Education Commission, 1974a, p.21).

South Dakota

Summary. South Dakota has 10 private institutions and 6 public institutions within its borders (U. S. Department of Health, Education, and Welfare, 1974, p. xxii). The private institutions enroll 23 percent of the state's enrollment in higher education (idem, 1975a, p.70). The South Dakota regents of education control the public system of higher education within the state (S.D. Comp. Law §§13-49-1 to 13-49-21, 1955). The state's master plan for higher education deals with public higher education.

Statutory Law

South Dakota's nonprofit corporation law governs the establishment of educational corporations (S.D. Com. Law §47-22-4, 1966; see gen. §§47-22-1 to 47-22-78, 1965). Educational institutions are exempt from property tax (idem, §10-4-9, 1933), sales tax (idem, §10-45-13, 1961), and use tax (idem, §10-46-15, 1951). The commissioner of higher education is directed to develop a master plan for academic programs and facilities for public higher education (idem §13-49-21, 1968). The state also provides a student incentive grant program for first-year students who are state residents attending a South Dakota public or private institution (idem, §§13-55A-1 to 13-55A-13, 1974).

Utah

Summary. Utah has nine public and four private institutions of higher education (U.S. Department of Health, Education,and Welfare, 1975, p. xxii). The private sector enrolls 38 percent of the total enrollment in Utah postsecondary institutions (idem, 1975a, p.70). The state board of higher education coordinates public higher education within the state (Utah Code Ann., §53-48-1, 1969). Utah's master plan and subsequent annual reports deal with both public and private higher education.

Statutory Law

Utah's not-for-profit corporate law governs the establishment of organizations of varying purposes including education (idem, §16-6-18 et seq., 1963). Nonprofit educationsal corporations are exempt from taxation (Utah Const. Art. 13, §2, 1898, see also Utah Code Ann.,

§59-2-1, 1898).

The state boaard of higher education, the coordinating body for public institutioons, is directed by legislative act to establish a master plan for tthe economical development of quality higher education within the state (Utah Code Ann., §53-48-2, 1975). The act also stipulates that "as further means of attaining a well integrated and adequate system of post-high school education in Utah, the State Board of Higher Education shall seek the cooperation of all private, denominational and other post-high school education in Utah, the State Board of higher Education shall see the coooperation of all private, denominational and other post-high school education institutions situated in this state and which are not supported by public funds" (idem, §53-48-22, 1969). The board also administrates a loan program for state students at accredited institutions, public and private (idem, §53-47-1, 1970; see also §§53-48-1 to 53-48-25, 1969).

Master Plan

The master plan was published by the Coordinating Council of Higher Education (1968), and is entitled Utah's Master Plan for Higher Education. The plan indicates that the state educational system must provide adequate programs while avoiding the duplication of services adequately provided by private or other state or local educational agencies (ibid., p. 16). One of the goals of the plan was for the coordinating council to improve the state's relationship with private institutions to maximize their contribution and eliminate duplication.

The Second Annual Report, 1970-71 was published by the Utah state board of higher education (1971). It noted that the board had taken action to redirect curricular programs to avoid duplication at the public institutions and "consolidated them with the states to private universities and colleges" (ibid., p.2).

Vermont

Summary. The state has 6 public and 14 private institutions of post-secondary education within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions enroll 41 percent of the students attending higher education institutions in Vermont (idem, 1975a, p.70). The state has no coordinating agency for its postsecondary system of higher education, nor does it have a master plan for higher education.

Statutory Law

Educational corporations are covered generally by Vermont's nonprofit corporate act (Vt. Stat. Ann. Title 11, §2301 et seq., 1973). The law specifically covering educational corporations regulates the granting of degrees (idem, Title 16, §174(a) et seq., (1969). Educational corporations established after 1967 must be certified bt the board of education before they may grant degrees. The certificate must be renewed in two years for a certification period of three years. Additional renewal is for an indefinite period (idem, Title 16, §174(c), 1969). Property owned or leased by educational corporations, excluding commercially leased property, is exempt from taxation (idem, Title 32, §3802, 1787). Corporations organized for educational purposes are also exempt from income tax (idem, Title 32, §5811, 1966).

Vermont provides a program of grants awarded according to need of students attending accredited institutions public or private (idem, Title 16, §2821, et seq., 1965). The state also allows any private non-profit postsecondary institution or state institution to finance construction or the purchase of property through the issuance of bonds (idem, Title 16, §3851 et seq., 1967).

Washington

Summary. Washington has 31 public and 12 private institutions of higher education (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Private institutions matriculate 11 percent of the students enrolled in higher education in the state (idem, 1975a, p.70). The Council on Higher Education coordinates the state's public sector of higher education (Wash. Rev. Code Ann., §28B80.010 et seq., 1970). The state provided us with a draft of their master plan which was in the final stages of development. The council also has published a staff report on private higher education within the state.

Statutory Law

Washington's not-for-profit corporate law covers the formation of educational corporations (idem, §24.03.015 et seq., 1969). The state board of education regulates and approves teacher certification programs within the state (idem, §28A.04.120, 1969). Schools and colleges are exempt from property tax (idem, §84.36.050, 1961). However, the Washington constitution limits direct financial aid to private institutions under sectarian control (Wash. Const. Art. 9, §4, 1889; see also Art. 1, §11, 1958). The state is also prohibited from giving aid or a loan to any individual, association, company, or corporation (idem, Art. 8. §5, 1889).

The Washington Council on Higher Education has the responsibility of coordinating public higher education within the state (Wash. Rev. Code Ann., §28B.80.030, 1970). The council has a membership composed of representatives from both the public and private sectors (idem, §28B.80.040, 1969).

The state financial aid program was enacted to provide financial aid in the form of loans and grants to needy students attending public and private institutions, with the exception of theological seminaries (idem, §28B.10.800 et seq., 1969). The state also enacted a tuition supplement program for students in the private sector and a State Higher Education Assistance Authority to provide loans to needy students in both sectors. Both programs have been ruled unconstitutional by the state supreme court (Council on Higher Education, n.d., p.362).

Master Plan

Concurrent Resolution No. 5 of the 1969 Session of the Washington State Legislature directed the Council on Higher Education to study private higher education in the state. As a result the council published a report entitled Washington Private Higher Education: Its Future and the Public's Interest in 1972. The report on the "public's interest" lists the following objectives regarding private higher education: to expand the role of private higher education, thus relieving the state of the need to provide certain programs; to maintain choices in Washington's higher education system; to preserve the existing private institutions and their quality of services and programs; to allow private institutions to develop specialized services and programs in certain areas where public-sector duplication would be uneconomical;

and to remove the financial uncertainties of the current situation facing private institutions (Council on Higher Education, 1972, p.1). The study finds that private institutions provide a diversity of programs and choice of institutional types and that, therefore, their preservation would be in the public interest (ibid., p. 31). Another finding indicates that internal reform would help reduce the financial crisis facing private higher education, but that outside assistance will be needed in the next few years (ibid., p. 54).

As a result of these findings the study recommends that a constitutional amendment be passed to give necessary financial assistance to the private sector. Pending such action, the study recommends a program of grants to students attending private institutions and a program on contracting with private institutions for the expansion of enrollment in nursing and allied health programs (ibid., p.99).

The council was in the final draft stages of a master plan to be entitled Goals for Washington Postsecondary Education. The plan defines "coordination" in relation to private institutions as cooperation between the private sector and the state along with the maintenance of diversity (Council on Higher Education, n.d., pp.33-34). Financial support was seen as an important inducement for cooperation from the private sector (ibid., p.34). The council affirmed the need for a constitutional amendment allowing aid to private higher education and for subsequent reenactment of legislation previously ruled unconstitutional (ibid., p.259).

In its section "Independent Colleges and Universities" the plan states:

> The intrinsic value of these institutions to Washington resides both in their ability to respond to the educational needs of many who reside there and the diversity they add to the total array of postsecondary education. In this state, because of their location, the private institutions, which are often in localities not directly served by public senior institutions or where the educational needs of the residents exceed the capacity of available public institutions, fulfill a critical role not always applicable to such in other states. This role may not yet be fully appreciated and exploited either by these institutions or the state [ibid., p. 353].

With this role in mind the council makes several recommendations regarding the private sector. First, the council believes that the "state has a responsibility to insure the survival and vitality of the private sector" (ibid., p.370). Second, the draft recommends that the council, the governor, and the legislature work together to assure state residents financial access to private institutions in areas not served by the public sector (ibid., p.370). The third recommendation deals with the development of regional advisory

committees, composed of representatives from the private and public sectors to develop cooperative educational delivery systems (ibid., p.371). Another recommendation concerns the cooperation of the private sector with the state in developing master plans for the state's system and the inclusion of the private sector's plans in the report (ibid., p.371). Fifth, the council requests that the private sector submit proposals for new degree programs to the council for review and comment (ibid., p.371). Finally, the council would periodically submit a report regarding the status of private institutions to the governor and the legislature (ibid., p. 371).

West Virginia

Summary. This state has 15 public and 10 private institutions of postsecondary education (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Its private institutions enrolled 11 percent of the total enrollment in higher education (idem, 1975a, p. 70). The West Virginia board of regents supervises and coordinates the public institutions within the state (W.Va. Code, §18-21-1 et seq., 1969). The master plan deals with the total system of public and private institutions within the state.

Statutory Law

The not-for-profit corporate law governs all nonprofit corporations including educational institutions (idem, §§31-1-136 to 31-1-160 et seq., 1974). The board of regents sets the minimum standards and rules governing the accreditation of postsecondary institutions within the state (idem, §18-26-13A, 1971). The board is also directed to make studies and recommendations regarding all aspects of higher education

within the state (idem, §18-26-8, 1969).

West Virginia provides financial aid to students in several ways. One is through a board-authorized loan program for citizens attending accredited institutions within or outside the state (idem, §18-26-17, 1971). The state also provides a scholarship program for needy residents attending approved public or private institutions within the state (idem, §§18-22B-1 to 18-22B-6, 1971; see Scholarships for Teacher Training, §§18-21-2 to 18-21-8, 1957). West Virginia nonprofit educational institutions are also exempt from taxes (idem, §11-3-9, 1863).

Master Plan

West Virginia's Master Plan , entitled A Plan for Progress, was published by the board of regents in 1972. As a premise the plan states: "Higher education in West Virginia must be planned and developed as a cooperative venture of the public and private sectors, recognizing the strength and potentialities of each" (West Virginia Board of Regents, 1972, p. 13). The plan provides several recommendations involving private higher education. One recommendation is for the expansion of financial aid programs to citizens of the state (ibid., p. 17). Another is the universal acceptance of credits to allow students to transfer easily among institutions within the state. Finally, the plan recommends that mutual cooperative arrangements between public and private institutions be developed to provide economically educational programs for state citizens (ibid., p.19). The plan also notes that cooperation from the private sector in developing the plan is not mandatory but is provided through voluntary relationship with the board of regents (ibid., p. 40).

Wisconsin

Summary. Wisconsin has 29 public and 30 private postsecondary institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The students enrolled in private institutions equal 15 percent of the total enrollment in higher education in Wisconsin (idem, 1975a, p. 70). The University of Wisconsin board of regents coordinates all public postsecondary education within the state (Wis. Stat. Ann., §§ 36.01 to 36.96 et seq., 1971). The state does not have a master plan for higher education.

Statutory Law

The law governing the establishment of non-stock corporations applies generally to educational corporations (idem, §§181.01 to 181.76 et seq., 1953). The specific law regulating educational corporations allows the board of directors to prescribe the courses of instruction and to confer degrees appropriate for institutions of a similar type (idem, §§182.028, 182.029, 1951).

In the area of benefits accrued, private nonprofit educational corporations are exempt from property tax (idem, §70.11(4), 1967), inheritance tax (idem, §72.15(2), 1975), income tax (idem, §71.01(3)(A), 1975), and sales tax (idem, §77.54, 1975). The state established the Higher Educational Aid Board to coordinate its financial aid programs (idem, §39.26 et seq., 1973). Wisconsin offers tuition grants to needy students enrolled in public or private institutions (idem, §39.30, 1973). They also have an honors scholarship program for high school graduates matriculating at public or private institutions in

the state (idem, §39.31, 1971). The student loan program is available to students in both sectors (idem, §39.32, 1971). The Talent Incentive Grant Program is for disadvantaged students enrolled in higher education within the state (idem, §39.39, 1971).

Footnote

[1] Amended by Section 6 of the Omnibus State Reorganization Act of 1974. (Vernon's Ann. Mo. Stat., §352,010, note 14, Otto v. St. Louis College of Physicians and Surgeons, 295, S.W. 537, 317 Mo. 49, 1927).

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Specific Aid to Private Sector

Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana
Maryland, Michigan, Nebraska, South Carolina

The states in Category 3 are distinguished from those in other categories in that they do not provide financial aid programs to students and institutions in both sectors, but also in that they provide specific aid programs for students and institutions in the private sector. Such programs include purchases through a state purchasing agency in one state, grants to private-sector students in nine states, scholarships to private-sector students in one state, direct private institutional grants in one state, and capitation grants to private institutions in two states.

All of the states have certification programs for higher education institutions. Eleven programs are quantitative, two programs are qualitative, and three programs list ease in transferring between public and private institutions as a purpose for certification.

Coordination by the state includes: one state with no coordination; three states coordinating the public sector; five states coordinating public institutions while considering the issues facing private institutions; one state coordinating the public sector, with private-sector participation on a voluntary basis; and one state requiring mandatory participation by private institutions that received state aid.

In the question of the private sector's performance of a public function, the statutory language indicates that three states rely on the private sector to educate a portion of the state's enrollment; three states indicate that the private sector performs a function in the public interest; one state authorizes consortium agreements; and one expresses responsibility to ensure the survival of the private sector. Master planning language indicates that four states rely on the private sector; eight states list the private sector's functions as in the public interest; two states recommend consortium agreements; and four states feel responsible for ensuring the continued existence of the private sector. The master plans also recommend consideration of the private sector in the plans of three states, voluntary participation in the plans of four states, and mandatory planning in three states. Participation in master plans as defined by statute shows: voluntary private participation in four states; consideration of private institutions in public sector plans in six states; and none or public only in two states, respectively.

Maryland, as the table indicates, shows a trend toward increasing its interdependent relationship with the private sector. Iowa, Maryland, and Michigan recommend mandatory planning, while Georgia, Maryland, and Nebraska rely on the private sector to educate a portion of their citizens, as stated in the purpose for the funding act.

The Meaning of "Private"

The states in this category have given serious consideration to the private sector, but their contacts with the private institutions could

Category 3

Aid Programs to Students at Public and Private Institutions plus specific aid programs to the private sectors students and institutions.

States	#1 Private Sector Dependence on the State: Benefits: Tax Exemption	Eminent Domain	No Aid - Constitution	Purchases Thru State	Student Aid: Loans: Public & Private	Loans: Private	Grants: Public & Private	Grants: Private	Schl.: Public & Private	Schl.: Private	Aid To Institution: Direct Grants	Capitation Grants	Program Grants	Facilities Grants	Loans or Bonds - Facilities	Contracts For Services	#2 Intrusiveness of State Regulatory Scheme: Certification or Licensing	#3 Regulatory Scheme Connotes Approval: Annual Reports Required	Quantitative - # Fac., Admin., Bldg., Amt. of Money	Qualitative: Qualitative - Quality of Program	To Facilitate Academic Transfer	#4 Public Function Argument: Relying on Private Sector to Educate %: Stat.	Plan	Function of Private Sector in Public Interest: Stat.	Plan	Contracts for Services: Stat.	Plan	Cooperative or Consortia Agreements: Stat.	Plan	Language - State Responsibility to Insure Private Sector Survival: Stat.	Plan	#5 Coordination By A State Agency: No Coordinating Body	Public Only	Public - Considers Private to Avoid Duplication: Stat.	Plan	Public - Private Voluntary: Stat.	Plan	Public - Private Mandatory: Stat.	Plan	#6 Master Plan or Planning Document: No Master Plan	Public Only	Public - Considers Private - Avoid Duplication: Stat.	Plan	Public & Private Voluntary: Stat.	Plan	Public & Private Mandatory: Stat.	Plan
Del.	X									X[A]							X		X																X													
Fla.	X				X		X					X					X		X						X									X													
Ga.	X							X	X													X		X									X													
Ind.	XX						X	X	X		X						X		X				X								X				X												
Iowa	X							X									X		X				X								X				X												
Kan.	X							X	X								X		X				X											X													
La.	X					X											X			X	X						X		X																		
Md.	X				X							X					X		X		X	X		X						X					X		X[B]	X								
Mich.	X							X	X								X	X[C]	X		X		X								X																X	
Nebr.	X							X									X		X			X		X				X				X														
S.C.	X		X	X	X			X									X		X								X								X											

have an invidious effect on the meaning of "private." Such a result would depend on the regulatory scheme and the procedures developed by state administration to implement the legislation, which might encroach upon the private institution's freedom to dictate institution missions free from state intervention.

The effects of direct aid on the meaning of private are several. First, providing aid for specific programs may force institutions to deemphasize or discontinue primary programs in order to develop programs for which they would qualify for state aid. General-aid programs may feature specific guidelines that might have a profound effect on institutional goals. Finally, after becoming dependent on state aid, institutions may be reluctant to develop new programs--particularly if they are controversial--out of fear of losing state funds.

Mandatory planning and coordination could result in a stifling of program development. The state may refuse to approve a new program in the private sector because of unnecessary duplication or for political reasons when the private sector program is innovative and experimental. Mandatory planning and coordination may also remove some of the freedom of selfdirection that now characterizes private higher education. The simple act of having private institutions report on what they are doing or planning to do does not seem to have an intrusive effect. The state may use the information to make plans for its own system. But if pressure is applied to change private institution plans, this coordination system would have an invidious effect.

The language of state statutes and master plans indicates that these states have placed an increasing importance on private sector institutions. This is particularly significant where the language indicates a reliance on the private sector to educate a proportion of the state citizens or where it indicates an attempt to ensure the survival of private institutions. If such language is translated into funding programs which in effect control the purse strings of private institutions, these institutions could become mere images of state institutions. There is danger here of injuring the very body whose rescue is sought. Where private institutions are thought to perform a public function, pressure may be brought to bear on institutions to conform to public needs instead of allowing them to evolve free from political pressures. States in this category attach great importance to the private institutions existing within their borders. High value brings scrutiny and the possibility of control.

Delaware

Summary. This state has three public and five private institutions (U.S. Department of Health, Education, and Welfare, 1975, p.xxii). Fourteen percent of the students enrolled in higher education in Delaware attend private institutions (idem, 1975a, p. 70). Delaware has a 1202 commission established to conform to federal requirements for aid to the state's higher education system (14 Del. Code, §§ 8101 to 8115, 1953). The Delaware Postsecondary Education Commission was established by executive order of the governor but has no basis in either statutes or the state constitution. One of the commission's

purposes is to conduct planning for postsecondary education in the state, including a consideration of existing programs in the private sector. The commission has formed an advisory committee called the Augmented Council of State Presidents, composed of the presidents of three public institutions and one president from a private institution (Delaware Postsecondary Education Commission Plan, n.d. p.3).

Statutory Law

Delaware statutory law provisions governing or affecting private higher education are few. The law provides that any private educational corporation established after 1945 must be certified and meet minimum standards set by the state board of education (8 Del. Code, §125 Gen. Corp. Law, 1945). Private colleges or organizations established for educational purposes are exempt from taxes assessed by anycounty or political subdivision (9 Del. Code, §3404, 1963). Delaware awards state scholarships to students enrolled in private colleges in the state (14 Del. Code, §3404, 1963). However, such scholarships must be awarded in academic disciplines not offered by the state system and in which opportunities are available in Delaware (14 Del. Code, §3404(b), 1963).

Master Plan

Delaware has an unpublished planning document dealing with postsecondary education in the state. However, the plan does not specifically address the problems facing the private sector within the state, although they are alluded to in the document. For example, one of the objectives of the Delaware Postsecondary Education Commission is:

> to strengthen cooperative relationships and linkages between postsecondary institutions through the development and/or strengthening of inter-institutional: Consortia Arrangements, Bilateral Arrangements, staff internships, [and] consultantships [Delaware Postsecondary Education Commission Plan, n.d., p. 20].

The commission also attempts "to coordinate planning and articulation" between higher education institutions and state agencies to increase benefits to students and taxpayers (ibid., p. 2). The majority of the document, however, details how the planning will proceed.

Florida

Summary. Florida has 37 public and 29 private postsecondary institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 17 percent of the students in Florida postsecondary institutions (idem, 1975a, p. 70). The state board of education is the chief policy-making board for public higher education in Florida (Fla. Stat. Ann., §238,01 et seq., 1955; see also Fla. Const. Art. 9, §2, 1968). The state's master plan deals primarily with public higher education.

Statutory Law

The not-for-profit corporate law includes the establishment of nonprofit educational corporations within the state (Fla. Stat. Ann., §617.01 et seq., 1933). Specific laws governing nonprofit educational corporations require approval of the charter by a circuit court judge (idem, §623.01 et seq., 1959; §623.09. 1959).

Private nonprofit education corporations are exempt from taxation.[1] The state board of education is directed to coordinate planning for public higher education (idem, §228.001 et seq.)

Financial aid is provided to Florida students in several forms. A guaranteed-loan program provides loans to students enrolled in public and private accredited institutions (idem, §239.47, 1955). Florida gives direct grants to private institutions based on the number of state students enrolled in selected programs (idem, §239.672, 1974).

Master Plan

The master plan, entitled Comprehensive Development Plan of the State University System of Florida, 1969-1980, deals primarily with the public sector. The plan, however, contains a section that reports current information on private higher education in Florida (Florida State Board of Regents, 1969, p. 9). The plan states that private higher education is "an essential part of higher education in the state" and that voluntary intersector cooperation should continue in the areas of planning and educational program (ibid., pp. 92-93). the plan also mentions a state scholarship program that benefits both sectors (ibid., p. 94).

Georgia

Summary. Although there are 31 public and 31 private institutions of higher education in Georgia (U.S. Department of Health, Education, and Welfare, 1975, p. xxii), the private sector educates 19 percent of the state's students in higher education (idem, 1975a, p.70). The board of regents of the University System of Georgia coordinates the public sector only, and the board has not developed a master plan.

Statutory Law

School corporations are governed by the Georgia not-for-profit corporation laws (Ga. Ann. Code, §22-2101 et seq., 1968). Schools by law are given the protection of limited liability for their torts, and school funds are not subject to judgment creditors for negligence judgments (idem, §22-5503, 1968).

The board of regents was established in 1931 to coordinate public higher education in the state and has no responsibility for the private sector (idem, §32-101, 1931). The state constitution permits the legislature to exempt property of schools from taxation if the schools are open to the general public (Ga. Const. Art., §2-5404, 1931). The legislature has implemented the tax exemption so that it now applies to private institutions that are opened to the general public (Ga. Ann. Code, §92-201, 1973). Private colleges and universities in the state are exempt from sales taxation if their academic credits are accepted as equivalents by the university system of Georgia (idem, §92-3404a (c) 2m, 1975).

The state provides two financial aid programs for students attending private institutions (idem, §32-3901, 1975). The preamble to this act states:

> The General Assembly declares that there exists within the state of Georgia a number of accredited independent colleges and universities whose facilities could be used effectively in the public interest by the grant of financial

> assistance to citizens of this state who choose to attend such colleges, thereby reducing the costs to the taxpayers of Georgia below the cost of providing similar instruction to such students at the University System. This chapter, therefore, is adopted as a means of providing higher education opportunities to citizens of this state in utilizing the educational facilities and resources of accredited private colleges and universities in this state more effectively.

One program provides tuition grants up to $400 per year for state residents attending private, accredited institutions (idem, § 32-3902, 1975), and the other provides incentive scholarships of up to $450 for first-time, full-time, resident students in Georgia public or private institutions (idem, § 32-3903, 1975).

Indiana

Summary. This state has 6 public and 39 private postsecondary educational institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 27 percent of the state's total enrollment in postsecondary institutions (idem, 1975a, p. 70). The Commission for Higher Education of the State of Indiana is the coordinating body for the public sector and performs a planning function for all postsecondary edcuation within the state (Ind. Stat. Ann. Ch. 20, § 12-0.5-1 et seq., 1971). The state's master plan deals with both public and private postsecondary education.

Statutory Law

Indiana's not-for-profit corporate law regulates the formation of non-profit educational corporations among others (idem, Ch. 23, §7-1 et seq., 1909). The law specifically outlines the regulations governing the formation and registration of incorporated colleges and universities (idem, Ch. 23, §13-5-1 et seq., 1909; see Ch. 23, §13-16-4, 1909).

The State Commission for Higher Education coordinates the public sector (idem, CH. 20, §12-0.5-1 to §12-0.5-11, 1971). The commission is directed to develop long-range plans for all of the state's higher educational institutions, considering such factors as enrollment, student financial aid, and factors pertinent to high-quality education (idem, Ch. 20, §12-0.5-8, 1975).

The state provides benefits to institutions in the private sector. The real and personal property of private nonprofit educational institutions used for educational purposes is exempt from taxation (idem, Ch. 6, §1-1-2, 1919; see also Ind. Const. Art. 10, §1, 1911). The law also allows counties to provide financial assistance to nonsectarian colleges (Burn's Ind. Stat. Ann. Ch. 23, §13-13-1, 1945; Ch. 23m §13-14-2, 1945).

The state has several programs of direct aid to students attending private institutions. The Indiana Scholarship Act authorizes scholarships based on academic ability and need to students who are enrolled in public or private institutions in the state (idem, Ch. 20, §12-21-1 to §12-2118, 1965). The state also provides "freedom of choice" grants to students enrolled in private nonprofit educational institutions in

Indiana (idem, Ch. 20, §12-21-13 to §12-2118, 1971). Students enrolled at public institutions may also receive a guaranteed loan (ibid., Ch. 20 §12-23-1 to §12-23-59, 1971).

Master Plan

The Commission on Higher Education has published a two-volume planning document. Volume one, The Indiana Plan for Postsecondary Education: Phase One deals with the current status of postsecondary education in Indiana. The section "Independent and Proprietary Institutions" discusses ways to structure financial aid to private higher education and outlines the existing programs of financial aid in the form of scholarships, grants, and loans to students enrolled in private institutions (Commission on Higher Education, 1972, p. 110). Indirect support in the form of tax credit against the state income tax of 50 dollars or 20 percent of the adjusted gross income, whichever is less, is mentioned (ibid., p. 110). The plan also does a comparative analysis of financial aid programs to private institutions in other states.

Volume two, A Pattern for the Future, deals with specific recommendations for the private sector. The financial problems of this sector were of primary concern. The commission noted that inflation and the subsequent need for increasing tuition rates have created numerous problems for private institutions, which could mean their demise. The plan acknowledges the state's responsibility to develop mechanisms to aid and maintain private institutions without compromising their independent nature (Commission on Higher Education, 1973, p. 21).

The private sector enrolls approximately 53,000 students. The Commission stated that

> to accomodate these students in the public sector would require development of facilities with a total capacity exceeding the enrollment at Purdue University's West Lafayette Campus. . . . [A]ny weakening of the independent sector would have serious consequences for the statewide system. A substantial financial burden would be shifted from independent institutions to the public sector and the systems desirable diversity would be eroded. . . . At the same time, action by the commission or by any other public agency must not reduce the essential freedom of any independent institution. Each independent college and university must be free to decide the nature of its participation in the total system [ibid., p. 13].

With these points in mind the commission made several recommendations.

Recommendations for assistance to the private sector deal with investigation and endorsement of various existing programs of financial aid to students. The commission recommended that an advisory committee study the private sector and develop methods through which private higher education could participate on the statewide system (ibid., p.13). According to a staff member at the commission, this committee was never formed. However, the commission does intend to comply with this recommendation at a future date.

The commission endorsed the present scholarship and educational grant programs administered by the commission (ibid., p.18). The plan recommended that the amount of individual student aid be determined by using tuition fee costs of attending an Indiana institution as part of the financial aid formula (ibid., p.18).

Iowa

Summary. Iowa has 18 public and 37 private postsecondary education institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 32 percent of the state's students (idem, 1975a, p. 70). The state board of regents governs and controls the public institutions of the state, (Iowa Code Ann., §§262.1 to 262.12 et seq., 1972). There is no mention of master-planning responsibilities, however. The Higher Education Facilities Commission has been given facilities-planning responsibilities for all of postsecondary education (idem, §262.2(1), 1972). The state's master plan involves the private sector.

Statutory Law

The state law concerning the private sector involves not only the establishment of private corporations, but also the financial assistance to students enrolled in private colleges and universities. The nonprofit corporation law regulates educational corporations (idem, §§5504.1 to 504.27, 1973). The law allows private institutions to confer degrees to students who have completed at least one year in residence at the institution (idem, §504.12, 1973). Certification of public health schools is conducted by respective health associations (idem, §147.32, 1939) while the certification of teacher-training

programs is governed by legislative guidelines (idem, § 260.1 et seq., 1973). A Private Schools Advisory Committee advises the State Board of Private Schools regarding standards for and approval of private school programs (idem, § 257.30, 1972). Real estate owned by educational institutions of the state as part of its endowment funds not exceeding 160 acres in any township is exempt from taxation (idem, § 427.1(11), 1972). The state also provides a tuition grant program for middle- and low-income students enrolled in accredited private postsecondary institutions (idem, § 261.9-16, 1971).

Master Plan

The master-planning document, entitled Structure for Decisions, has as its purpose to "make recommendations concerning a master plan involving some method of long-range continuing coordination and planning for higher education programs and facilities in Iowa, including programs and facilities of public and non-public higher education institutions in Iowa, in order to eliminate duplication and bring about the best possible utilization of existing facilities and to control or give direction for the construction of new facilities" (Peat, Marwick, Mitchell & Co., 1973, p. I-1). Several roles the private sector could play in the future are: continuing to enroll a substantial portion of the state citizens; concentrating on the undergraduate program while continuing to award graduate degrees where high-quality programs exist; and cooperating with the public sector to avoid needless and costly duplication of facilities and programs (ibid., p.III-4). The Iowa Coordinating Council was formed by the participating groups in order to promote coordination in post-secondary education. Members of this voluntary organization are representatives

of the Department of Public Instruction, the board of regents, the Association of Private Colleges and Universities, and the Higher Education Facilities Commission (ibid., p. II-5). The colleges and universities, public and private, have submitted to the Iowa Coordinating Council new programs for review and have complied with the Council's recommendations. The plan recommends that a Commission for Postsecondary Education be established with powers to require all institutions to participate in the efforts to coordinate the system (ibid., p. V-10).

Kansas

Summary. This state has 28 public and 24 private institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Private institutions enrolled 11 percent of those in higher education (idem, 1975a. p. 70). This is a decline from 1970, when the private sector enrolled 15 percent of the state's students in higher education (Master Planning Commission, 1972, p. 14). The state projects an 8 percent enrollment in the private sector by 1980 (ibid., p. 20).

The state board of regents governs all public instruction within the state (Kan. Stat. Ann., § 72-6101 et seq., 1967; Const. Art. 6, 1966) Legislative action formed a master-planning commission, charged with developing master plans for postsecondary education in the state (Kan. S.C.R., 40, 1970, amended by S. C. R., 58, 1971). These plans deal with problems and issues concerning private higher education in Kansas.

Statutory Law

The statutory provisions governing Kansas private institutions are not extensive. The laws governing private educational corporations are

similar to those in other states and prescribe a number of directors, the right to own property and to control internal affairs among others (Kan. Stat. Ann., 17-6101 et seq., 1972). Provisions for certification of degree programs require that articles of incorporation be on file with the secretary of state and that the educational corporation receive the approval of the state board of education (idem, §17-6105, 1972).

In Kansas property used solely for educational purposes is exempt from taxation (Kan. Const. Art. 2; see also §79-201, 1862). The state has a scholarship program for students who have exhibited ability and are enrolled in accredited public or private institutions in Kansas (Kan. Stat. Ann., § 72-6810 to §6815, 1974). Financial assistance by the state to private institutions is provided through a tuition grant program. The grants are awarded to students attending accredited private instutitions and are based on student financial need (idem, § 72-6107, 1972).

Master Plan

The state master plan, entitled Postsecondary Education Planning to 1985, notes the decline in enrollment in the private sector and discusses its future role in Kansas.

> The Master Planning Commission does not believe it appropriate to make recommendations regarding the role of non-public educational institutions. It does believe that private colleges have made significant contributions to Kansas postsecondary education--the private sector provides important alternatives for postsecondary education. The continuance of private education is considered to be in the best interest of the state [Master Planning Commission, 1972, p.35].

The commission recommends a student-assistance program for needy Kansas citizens enrolled in public or private postsecondary institutions (ibid., Recommendation #14, p.59). According to Ben F. Barrett, a research associate for the legislative research department, State of Kansas, this recommendation has not been put into law as of winter 1975.

Louisiana

Summary. The state has 11 private and 12 public postsecondary institutions (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). As calculated from enrollment figures provided by the U.S. Department of Health, Education, and Welfare, 1975a, p.70, 14 percent of Louisiana's postsecondary students are enrolled in the private sector. The Louisiana board of regents replaced the Louisiana Coordinating Council for Higher Education on January 1, 1975 (La. Rev. Stat., §§ 17-3121-17-3134 et seq., 1974). Although the master plan for higher education was written by the coordinating council, the regents have been instructed to update the document. At the time of this writing the update was not completed.

Statutory Law

The law governing nonprofit corporations is similar to those of other states except that the law prohibits the state from forming such corporations (idem, § 12:201, 1963). The code concerning educational corporations provides that those institutions offering four years of study (a minimum of 180 days per year) beyond high school may confer the bachelor's degree (idem, § 17:2051, 1963). The state board of education has the authority to approve private institutions if their programs meet the standards set for programs in the public sector (idem, § 17:

411, 1921). Another law gives colleges and universities degree awarding powers for four year training (idem, §17:2051, 1963). The law also ensures the continuation of degree granting authority (idem, §17:2052, 1963). All nonprofit corporations are exempt from all taxes to any political institutions and the state, including ad valorem taxes (idem, §12.202.1, 1883). Louisiana student-assistance programs are directed to students in the public sector (idem, §17.3134, 1974). However, the state does provide grants to students attending Tulane University Medical School. There are no statutory provisions allowing contracts with the private sector to provide educational services to the state.

Master Plan

The master plan for higher education makes several recommendations concerning private higher education. One recommendation encourages the formation of an "association of the public and private institutions of higher education." In cooperation with the council, the association should help "to effect state wide sharing of resources, development of programs and opportunities in two and four year technical programs" ("The Coordinating Council for Higher Education," 1972, p.4). Another recommendation is that private institutions provide statistical data and voluntarily participate in the planning process, allowing the council to give careful consideration to the private sector (ibid., p. 6). The plan further recommends that public institutions, their boards, and the council consider the effect they have on the private sector and that "every reasonable program of encouragement and assistance must be explored to insure its continued operation and financial well being" (ibid.)

The final recommendation concerns the revocation of the obligation of private institutions to provide free scholarships on terms prescribed by the state legislation (ibid.).

Maryland

Summary. Maryland has 25 public and 22 private institutions of higher education operating within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Students in the private sector constitute 18 percent of the state's enrollment in postsecondary education (idem, 1975a, p. 70). The Maryland Council for Higher Education is the coordinating body for the state's public and private institutions (Md. Code Ann. 77A, §§28 to 32, 1975). The law instructs the council to develop plans for higher education (idem, 77A, §30, 1974). This state has one of the most extensive planning programs for higher education. The master plan, including recommendations for both the public and private sectors, was published in 1968 with subsequent annual reports published through 1974. A separate publication entitled Private Higher Education in Maryland was published by the council in 1973.

Statutory Law

The law governing the formation of nonstock corporations also regulates the establishment of educational institutions (idem, 23, §§ 132 to 138, et seq., 1951). Educational nonprofit institutions are exempt from taxes on buildings, furniture, equipment, and libraries used exclusively for educational purposes (idem, 81, § 9(8), 1939). They are also exempt from inheritance tax (idem, 81, § 150, 1970).

The state regulates the granting of academic degrees to protect

the public from "fraudulent or substandard degrees" (idem, 77, §151, 1969). An institution established after 1961 and requesting the right to confer degrees must file a notice with the state department of education containing the following information: the names and qualifications of the faculty and administrators; full description of the degrees to be awarded; and information concerning the facilities (idem, 77,§§151 to 159, et seq., 1961). The state department of education has the right to inspect books or records pertaining to the conferring of degrees (idem, 77, §156, 1961). The state is given injunctive relief and fines as enforcement of these regulations (idem, 77, §159, 1961).

The Maryland Council for Higher Education coordinates higher education in the state (idem, 77A, §§28 to 32 et seq,, 1974). The objective of the council is to coordinate all institutions and agencies involved in higher education to achieve "the most effective and economical employment of existing facilities and of fostering a climate of cooperation and unified endeavor in the field of public higher education" (idem, 77A, §30(4), 1974). The council is also given a planning function for all higher education within the state (idem, 77A, §30(3), 1974, see also 77, §31, 1969) The council comprises representatives of both the public and the private sectors (idem, 77A, §30(3), (4), 1974).

Financial aid to Maryland's private institutions can be provided in the form of direct grants representing 15 percent of the money assigned by the state to each F.T.E. student in the public system times the number of FTE state citizens enrolled in private institution (idem, 77A, §§65 to 69, 1974). In order to receive such awards the institution must:

(1) be a nonprofit institution accredited by the state department of education; (2) have been established prior to 1970; (3) have one or more associate in arts or bachelor's degrees; (4) submit all new programs to the Maryland Council for Higher Education for approval; and (5) use the funds for nonsectarian purposes only (idem, 77A,§§ 65 to 69, 1974). The state also has a program for students in both the public and private sectors (idem, 43A, §§3 to 12, 1963).

Master Plan

The master-planning process in the state of Maryland has been continuous since 1968. The chronology of the planning process gives more weight to the problems of the private sector with each ensuing year.

The original planning document, Master Plan for Higher Education in Maryland, discusses the private sector generally. It mentions the financial problems beginning to plague the private institutions while extolling the virtue of a diverse system of higher education within the state (Maryland Council for Higher Education, 1968, pp. 2-4). The plan proposes: (1) that the new public senior colleges should not be organized until the planning for community colleges and private institutions is ascertained (ibid., p.4-4); (2) that private institutions submit projections and institutional plans to the council (ibid., p.4-20); (3) that interinstitutional programs be given special consideration because of the unique opportunity they afford students and the state's economy (ibid., p. 4-37); (4) that the financial problems of the private sector be investigated by the council (ibid., p. 4-42); and (5) that Johns Hopkins University, a private institution, and the University of Maryland

investigate the expansion of current physician training and allied health programs before another medical school is considered (ibid., pp. 4-51 to p. 4-53). The objectives of this master plan are to set up mechanisms to assess existing programs and make recommendations in the interest of fostering interinstitutional cooperation instead of independent competition (ibid., p. 1-6).

The Fifth Annual Report published in 1968, reiterates the need for investigation of health manpower needs and services provided by the public and private sectors (Maryland Council for Higher Education, 1968a, p.2-3). The report also recommends the consolidation of all student aid programs under the Maryland Student Financial Assistance Board (ibid., p. 9-1).

The Sixth Annual Report indicates that the expansion of Johns Hopkins University and the University of Maryland would adequately provide for the state's manpower needs through 1980, negating the need for a new medical school (Maryland Council for Higher Education, 1970, p. 2-4). This report also cites the underutilization of space in the private sector. It indicates that "there would be an appreciable savings to the state in terms of capital construction and annual operating costs if means can be devised to channel some of the growth in enrollment to private institutions" (ibid., p. 6-13).

The Seventh Annual Report again recommends a council study of the financial problems in the private sector (Maryland Council for Higher Education, 1971, p. 2-21). The Eighth Annual Report comments on the need to eliminate unnecessary duplication of programs (idem, 1972, p. 3-13).

The report specifically asks programs graduating fewer than ten students each year to justify their continued existence (ibid., p. 3-13).

The Ninth Annual Report recommends that new programs not be started at public institutions if similar programs exist at another institution within commuting distance (Maryland Council for Higher Education, 1973, p. 1-11), and noted that the 1971 legislature had granted aid to private institutions on the basis of number of degrees granted per year (ibid., p. 3-3).

In 1973 the council published Private Higher Education in Maryland, a report on the condition of the private sector. This report's recommendations were incorporated into The Tenth Annual Report. The recommendations involve aid to private institutions in the form of direct grants for each FTE student enrolled in the private sector. As noted, the recommendation was enacted into law that same year. The council also recommends interest subsidies and construction grants either to rehabilitate current facilities or to build new facilities where needed (Maryland Council for Higher Education, 1974, p. 1-3). The report lists "four basic premises underlying public aid to private higher education": to preserve and strengthen the dual system of higher education; to maintain the private institution's autonomy; to maintain a variety of educational opportunities; and to make optimum use of state funds by utilizing existing programs and facilities in the private sector (ibid., p. 1-5).

Michigan

Summary. Michigan has 42 public and 46 private postsecondary institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The 46 private institutions enroll 12 percent of the state's students (idem, 1975a, p. 70). The state board of education supervises and coordinates public higher education within the state, but has planning responsibilities for all of higher education (Mich. Stat. Ann., § 15.1023(9), 1963). The state's master plan for higher education deals with both the public and private sectors.

Statutory Law

Michigan's corporate law limits the type of postsecondary institution according to the amount of capital in the nonprofit corporation (idem, §§21.118 to 21.133 et seq., 1967). Although these laws apply to educational corporations there are also specific laws covering these corporations (idem, §§21.171 to 21.148 et seq., 1958). The state statutes classify educational corporations on the basis of their capitalization as follows: W capital of not less than $500,000; X capital of between $500,000 and $1,000,000; Y capital of $1,000,000 or more; and Z institutions controlled and operated by a religious denomination (idem, § 21.171, 1958). Based on the capital on hand, the nonprofit corporation can establish colleges of the following type: Class W, a junior college; class C, a four-year institution; class Y, graduate programs; and class Z, a college of class W, X, or Y (idem, §21.172, 1958).

Michigan law provides for certification of degree programs for privately owned institutions (idem, §15.1110(1), and (2), 1974).

The department of education certifies degree programs of these institutions on the basis of minimum standards established for housing space, administrative facilities, educational programs, teaching facilities, and instructional staff (idem, §15.1110(1), 1974) Noncompliance with standards set by the department of education could result in action by the department to terminate the institution's program offerings, if necessary through injunction (idem, § 15.1023(10), 1974).

The nonprofit educational institutions of Michigan are exempt from real and personal property tax (idem, § 7.556, 1974). They are also exempt from sales tax, use tax, and personal property tax (idem, § 7.561, 1974).

The state board of education has specific supervisory powers over public higher education within the state. It also has the responsibility of statewide planning for all higher education within Michigan's borders (idem, §15.1023(9), 1963).

Michigan's Higher Education Assistance Authority was created to coordinate and administer the state's financial assistance programs (idem, §§15.2097(1) to 15.2097(134), 1974). The state provides scholarships to students attending any accredited institution in the state (idem, §15.2097(31), 1964). The state also awards tuition grants to students in private institutions pursuing study in areas other than theology, divinity, or religious education (idem, §§15.2097(81) to 15. 2097(89), 1966).

Master Plan

Michigan's master plan, The State Plan for Higher Education in Michigan, published in 1973, deals with questions and issues involving the private sector. In discussing the role of private higher education the plan states: "The State Board of Education expects to seek additional methods by which the private institutions can be properly assisted therefore, the State Board reaffirms its support for private higher education, and will seek to foster its welfare and development by appropriate measures consistent with constitutional and statutory provisions and sound public policy" (Michigan Department of Education, 1973, p. I-15).

In the plan the state board affirmed its support of the scholarship and tuition programs (ibid., p. II-28). The board also notes that it has the authority to visit private institutions every three years and, therefore, will require private institutions to supply pertinent educational and program information to the board (ibid., p. I-8). The state board also encourages private institutions to develop five-year plans and to file them with the board (ibid., p. III-32). Finally the board is committed to establishing new public baccaleaureate institutions only after assessing the capabilities of existing public and private institutions within a geographic region (ibid., p. III-39).

Nebraska

Summary. Nebraska has 13 public and 14 private postsecondary institutions (U. S. Department of Health, Education, and Welfare, 1975. p. xxii). Private institutions have 21 percent of the state's enrollment in higher education (idem, 1975a, p. 70). The state has no specific board

that coordinates public and/or private institutions. The board of Regents of the University of Nebraska, the board of trustees of Nebraska State Colleges and the State Board of Technical Community Colleges coordinate their respective multicampus systems within the public sector (Berve, 1975, p. 326). The state has not developed a master plan for higher education to date.

Statutory Law

Nebraska not-for-profit corporate law applies to educational corporations (Nebr. Stat. Rev., §§21-1901 to 21.1991, 1968). The law dealing spe i ically with educational corporations requires that new corporations petition the state board of education for approval to award degrees (idem, §§79-2401 to 79-2407, 1967). The petition must contain information concerning: the objectives of the proposed college, instructional programs and staff qualifications, financial stability, and other related matters or items the board requests (idem, §79-2401, 1967). The board has the power to approve or disapprove the petition (idem, §79-2405, 1967). If the board disapproves, the colleges cannot be established (idem, §79-2406, 1967). Colleges within the state that do not receive regional accreditation must be accredited by the state board of education (idem, §79-2407, 1967).

Nebraska established a State Commission for Higher Education to administer a grant program for students attending private institutions (idem §§85-701 to 85-720, 1972). The act states that "the provisions of a higher education for all residents of this state who desire such an education and are properly qualified, therefore, is important to the welfare and security of this state and nation and consequently is an

important public purpose" (idem, §85-701, 1972). The increases in tuition in the private sector have removed the freedom of choice students should have. The law also states that it in no way intends to influence or control the policies of private institutions (idem, §85-720, 1972). Finally, Nebraska law exempts nonprofit educational corporations from taxation (Nebr. Const. Art. 8, §2, 1903; Nebr. Stat. Rev., §77-202(c), 1903).

South Carolina

Summary. South Carolina has 23 public and 24 private institutions (U.S. Department of Health, Education, and Welfare, 1975,, p. xxii). The private sector enrolls 23 percent of the students attending postsecondary institutions within the state (idem, 1975a, p. 70). The South Carolina Commission for Higher Education coordinates and has supervisory responsibilities for the state's public system of higher education (S.C. Code, §§22-15 to 22.15.11, et seq., 1967). However, the state's master plan, Goals for Higher Education to 1980, published in 1972, deals with public and private higher education within the state.

Statutory Law

The law governing nonprofit corporations also applies to educational corporations (idem, §§12-759 to 12.762.4, 1971). Colleges and universities may issue degrees for programs approved by the state board of education (idem, §22-4, 1952). Corporations organized for educational purposes are also exempt from income tax (idem, §65-226(3), 1952). Although the state of South Carolina Commission on Higher Education coordinates public higher education, the law provides for the formation of an Advisory

Council of Private College Presidents to advise the commission on the role of nonpublic colleges in the state higher education system (idem, §22-15.8(1), 1971). One of the objectives of the commission is to promote a better understanding among institutions, both public and private, of the state's educational needs (idem, § 22-15.7(3), 1967).

The state has established tuition grants for South Carolina students enrolled in nonsectarian programs in registered independent colleges within the state (idem, §§ 22-91 to 22-95, 1970). The Education Acceptance Authority administers the guaranteed loan program for citizens of the state enrolled in higher education (idem, §22-96 to 22-96.17, 1971). South Carolina's Budget and Control Board makes purchases for independent colleges and allows the colleges ro participate in the state's contractual arrangements which can result in substantial saving for the institutions (idem, §1-359, 1971).

Master Plan

Several recommendations were adopted in the master plan that specifically affect private higher education. One recommendation is to remove the constitutional barrier to indirect aid to sectarian institutions (South Carolina Commission on Higher Education, 1972, p. 137). The plan also recommends that a program of nonrepayable tuition grants be established for needy students attending the institution of their choice (ibid., p. 137). The purpose of this program is to supplement the existing, more restrictive grant program (ibid., p. 140).

Another recommendation encourages cooperative agreements between the public and private sectors and within the private sector (ibid., p. 201).

Finally, the plan recommends that the tuition-grant program for students in the private sector be supported with additional financial allocations (ibid., p. 205). The plan notes that, as a result of the state supreme court ruling allowing only students from institutions under nonsectarian control to receive tuition grants, students enrolled in only four private institutions were eligible to participate in the program. A constitutional change was seen as the only solution (ibid.).

Footnotes

[1] Fla. Stat. Ann., 623.13 et seq. (1959; see also Fla. Stat. Ann., §196.191 (1895) property tax used for educational pruposes; §212.08(7)(a) (1949 sales tax.

[2] Statutes providing degree granting powers to specific institutions: La. Rev. Stat., §17-2072, St. Paul's College; La. Rev. Stat., §7-2076, §2075, Loyola University, La. Rev. Stat., De Lisle College of New Orleans.

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Contracts and Consortiums

Alabama, Alaska, California, Connecticut, Illinois, Kentucky, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey. New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Virginia.

The states in the category show numerous contacts between the state and the private sector. These states have aid programs to students enrolled both in the public and private sectors, along with exclusive aid programs for students and institutions in the private sector. Programs for specific private-sector aids include: grants to students in six states, direct institutional grants in four states, capitation grants in seven states, program grants in two states, facilities grants in seven states, and loans and bonds for facilities in seven states. Five of the states provide condemnation power to private institutions. Of course, all of the states exempt private institutions from taxation.

The distinguishing characteristic of this category is the existence of consortium arrangements between public and private institutions or contracts between the state and public institutions on one hand and private institutions on the other. Alaska and Oklahoma have statutory provisions for consortium or cooperative agreements between public and private institutions, while four other states provide for such programs, along with contracts for services and programs between the state or public institutions and the private sector. The remaining 17 states provide simply for contracts between the state and private higher education.

Under regulation and licensing, 18 states certify degree programs in the private sector, but only two of the certification programs could be considered qualitative, that is, as setting standards equal to those for the public sector's degree programs. One state requires an annual report if the private institution is under contract with the state. New York and New Jersey provide for mandatory coordination by the private sector and mandatory participation in state wide master-planning.

In their statutory language 4 states rely on the private sector to enroll a portion of their total enrollment; 7 states consider private education to be in the public interest, 17 states authorize contracts with the private sector; 7 authorize consortiums or cooperative arrangements between the public and private institutions; and 4 feel that it is a state responsibility to ensure the survival of the private sector. In master-planning language, 12 states recommend reliance on the private sector, 11 states see the private institutions functioning in the public interest, 13 states recommend additional or continuing contractual relationships, 14 states recommend continuing or new consortium arrangements, and 11 states view the state as responsible for the private sector's survival. In many cases both the master plans and the statutes cite the added financial burden the state would have to assume if it were required to educate those currently enrolled in the private sector, as the primary reason for developing funding programs and contractual arrangements with private institutions. Some of the states alsoview the system of private and public institutions as a single system needing coordination to provide for efficiency and to prevent unnecessary duplication.

TABLE 4.

Contracts or consortia agreements between the state, public institutions, and institutions in private sector.

States	#1 Private Sector Dependence on the State: Benefits: Tax Exemption	Tuition Benefits	No Aid + Constitution	Purchases Thru State	Student Aid: Loans: Public & Private	Loans: Private	Grants: Public & Private	Grants: Private	Schl.: Public & Private	Schl.: Private	Aid To Institution: Direct Grants	Capitation Grants	Program Grants	Facilities Grants	Loans or Bonds - Facilities	Contracts for Services	#2 Loss of State Regulatory Scheme: Certification or Licensing	Annual Reports Required	#3 Regulatory Scheme Connotes Approval: Quantitative - # Fac., Admin., Bldg., Amt. of Money	Qualitative - Quality of Program	Qualitative: To Facilitate Academic Transfer	#4 Public Function Argument: Relying on Private Sector to Educate ?: Stat.	Relying on Private Sector to Educate ?: Plan	Function of Private Sector in Public Interest: Stat.	Function of Private Sector in Public Interest: Plan	Contracts for Services: Stat.	Contracts for Services: Plan	Cooperative or Consortia Agreements: Stat.	Cooperative or Consortia Agreements: Plan	Language - State Responsibility to Insure Private Sector Survival: Stat.	Language - State Responsibility to Insure Private Sector Survival: Plan	#5 Coordination by A State Agency: No Coordinating Body	Public Only	Public - Considers Private to Avoid Duplication: Stat.	Public - Considers Private to Avoid Duplication: Plan	Public - Private Voluntary: Stat.	Public - Private Voluntary: Plan	Public - Private Mandatory: Stat.	Public - Private Mandatory: Plan	#6 Master Plan or Planning Document: No Master Plan	Public Only	Public - Considers Private - Avoid Duplication: Stat.	Public - Considers Private - Avoid Duplication: Plan	Public & Private Voluntary: Stat.	Public & Private Voluntary: Plan	Public & Mandatory: Stat.	Public & Mandatory: Plan
Ala.	X										X					X																X									X
Alaska	X	X			X			X								X																											
Calif.	X				X		X[12]a		X							X[1][2]	X		X																								
Conn.	X				X				X			X			X	X			X		X[1][2]	X	X			X	X	X	X						X				X	X			
Ill.	X							X				X	X		X	X	X		X	X		X		X	X	X	X	X		X				X							X	
Ky.	X	X			X		X									X	X		X		X							X				X										
Maine	X				X			X									X		X	X				X		X	X	X						X					X				
Mass.	X								X						X	X	X		X				X		X	X	X		X		X			X								
Minn.	X							X	X			X			X	X	X		X					X	X	X	X		X						X								
N.H.	X															X[1][2]	X		X		X		X	X			X	X		X		X			X								
N.J.	X	X					X		X			X	X		X	X	X	Q	X	X		X	X	X	X	X	X	X	X	X	X								X	X			
N.Y.	X	X			X		X	X[1][2]	X		X					X	X	X[8]	X	X			X		X	X	X	X	X	X	X						X	X			
N.C.	X				X		X		X[1][2]		X[2]	X				X	X		X								X												X	X			
Ohio	X	X			X		X			X[6]					X	X[1][2]	X		X				X		X	X	X				X												
Okla.	X				X		X									X			X						X		X	X															
Pa.	X				X				X			X		X	X	X	X		X				X		X	X	X		X		X											X	
Tenn.	X				X[1][2]		X					X[1][2]				X[1][2]	X		X			X[1][2]		X	X	X		X		X					X								
Tex.	X							X								X[1][2]							X	X	X[1][2]									X						X	X	
Va.	X				X		X								X	X	X		X				X		X	X	X				X								X		X		X	
Oreg.	X				X				X							X	X		X				X		X			X	X													X[1][2]i	

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i 2. Institutions receiving direct state funding.
b 2. Health related programs in the private sector.
h 4. Comprehensive plan in the drafting stages
c 6. Library, computers, etc.
g 7. Ohio College Library Center - under contract to provide books to private institutions - receives direct state grant
d 8. Contract with Dartmouth
a 12. Graduate education is in the public interest

Coordination by the state in this category ranges from two states coordinating the public sector only; eight states coordinating the public sector, with consideration of issues in the private sector; eight states coordinating the public sector, with the private sector participating on a voluntary basis; and, as stated previously, two states with mandatory coordination of the public private sector. The master-planning recommendations regarding coordination include: five states with public-private voluntary coordination; five states with public-private mandatory coordination; and one state with public coordination and consideration of private-sector issues. As is evident, states in this category perform the greatest degree of coordination of the private sector. The same pattern holds true for statutory master-planning, where three states have no master-planning; one state plans for the public sector; one state considers private-sector issues in master plans for the public sector; ten states provide for public-private sector voluntary participation in planning; and two states have mandatory master-planning for both sectors. Regarding recommendations for future planning, four states recommend consideration of private-sector issues in the public plans; six recommend public-private voluntary planning arrangements; and four recommend mandatory planning arrangements.

The Meaning of "Private"

The concept of private higher education for the states in this category is considerably different from that in the first two categories. These states have placed great value on their private higher education institutions. They have developed a variety of programs to strengthen and preserve that sector. Through coordination many have attempted to integrate the two sectors into one state system of higher education.

One of the programs affecting the concept of "private" in these states is financial aid programs earmarked specifically for the private sector. As discussed in a previous chapter, such programs, depending upon the nature of regulations to implement them, can result in restrictions on decision-making or on innovations in programming. Some might argue that private institutions have the right to accept or reject such aid with its restrictive regulations, but in today's financial realities such a choice may not be available.

Direct grants for programs seem particularly significant. Such grants may force the institution to sacrifice one program in order to qualify for state grant money earmarked for another type of program. The effect of block grants seems to depend upon the regulatory scheme. Capitation grants may directly affect the admissions practices of an institution. For example, an institution may lower its admission standards or narrow the geographic make-up of its student population to qualify for aid. These modifications can significantly change the nature of the institution and its mission.

Consortium agreements are another contact that may severely limit the independent nature of private institutions. To an extent, such limitations would depend on the nature of the consortium. If the structure is loose and covers only one or two specific programs offered by the institution, its effect would be less significant than where the consortium evolves into an organization upon which member institutions have become dependent. The independent nature of private institutions would be particularly threatened if the consortium was dominated by state instituions and, therefore, was controlled by the state.

The effect of contracts on private institutions are several. First, the institution may compromise its admissions standards, program emphasis, and mission to gain a state contract. Second, after contracting with the state, the institution's decisions may be made in the interest of perpetuating the contract relationship.

The language of the statutes and master plans of these states indicates a significant change in the concept of "private" from lack of involvement by the state to significant state involvement in private-sector issues and plans. The reliance on the private sector to educate a certain proportion of the state's citizens means that the state is attempting to look after the public's best interests on issues involving the private sector. This concept implies a measure of control unlike the concept of allowing a parallel system in the private sector to exist with minimal involvement. The idea of control is also evident in the language emphasizing the additional financial burden the state would have to carry if it had to educate citizens enrolled in the private sector and in the language indicating a responsibility to ensure the survival of private-sector institutions. To effectively achieve the objectives outlined in such language programs leading to a measure of control over private institutions and coordination of both public and private sectors may become a necessity.

The states in this category have, in fact, attempted to institute a system of either mandatory or voluntary coordination of private institutions. Coordination may take the form of requiring private institutions to file five-year plans with the coordinating board or requiring public

and private institutions to gain approval for new programs or all programs at regular intervals. Obviously the degree to which the state attempts to coordinate its system of higher education can adversely affect the nature of private higher education.

Alabama

Summary. There are 30 public and 21 private institutions of higher education located in Alabama (U.S. Department of Health, Education, and Welfare, 1975, p.xxii) and the private institutions enroll 13 percent of the state's higher education students (idem, 1975a, p. 70). Coordination of all postsecondary education is accomplished by the Commission on Higher Education, established in 1969 (14 Ala. Code, §2, 1969). The master plan for higher education mainly outlines recommendations for the public sector, but advocates coordination between the public and private sectors.

Statutory Law

The formation and organization of corporations, including educational and nonprofit corporations, is governed by the Corporation Act (10 Ala. Code, §§156-167, 1915), which provides that the amendment of the charter of a corporation formed for educational puposes must be approved by the governor, and that all assets held for educational purposes must be turned over to another educational corporation upon dissolution (10 Ala. Code, §243. 1955). No statutes govern the certification of degrees or educational programs.

The Alabama Commission for Higher Education was formed in 1969 and consists of nine members from the general public who serve terms of nine years each. The enabling statute recites the purpose of the commission as follows:

> An Act to establish the Alabama Comm. of Higher Education for the general purpose of promoting an educational system that will provide the highest possible quality of collegiate and university education to all persons in the state able and willing to profit from it; to provide through the Commission for continuous study, analysis, evaluation, planning, reporting and recommendations for long-range planning with established priorities on a state-wide basis to assure a sound, vigorous, progressive and coordinated system of higher education for this State [14 Ala. Code, §3(a), 1969].

The statute does not specifically require a master plan be developed, but it does require the commission "to study needless duplication of research, education, or service programs to the state, and to make recommendations to institutions that would strengthen the total program of higher education in the state" (14 Ala. Code, §6, 1969).

All real and personal property actually used for educational purposes and owned by a school is exempt from taxation (Ala. Const. Art. 4, §91; 52 Ala. Code, §2(a), 1972). In addition to financial support via the tax exemption, the state provides for direct grants to private institutions. Tuskegee, a private university, has received public funds since its inception and has had members of its board appointed by the governor (Alabama Commission on Higher Education, 1975, p.9). State-supported schools are given broad statutory discretion

to contract with any private institution, within or without the state, to provide educational facilities to Alabama residents at a cost comparable to the cost of state facilities (52 Ala. Code, §40(2), 1945). Similarly, the state board of education may provide aid to Alabama residents for graduate and professional education at any institution, within or without the state, at a cost comparable to the cost if the education were provided at a state school (52 Ala. Code, §40(1), 1945).

Master Plan

The preliminary draft of the master plan, dated July 29, 1974, recognizes that private institutions represent a valuable asset to the state in terms of their physical plants, the role they play in the preparation of the state's professional and civic leadership, and the burden they shoulder in educating Alabama residents without significant costs to the state (Alabama Commission on Higher Education, 1975, p. 54). The master plan recommends that private institutions be fully represented on the various councils that serve in an advisory capacity to the commission. Otherwise, the plan only notes that "state policy should, insofar as is constitutional and feasible, be designed to foster and encourage" private institutions (ibid., p. 55).

Alaska

Summary. Alaska has one public and two private postsecondary institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions enroll 9 percent of the state's enrollment in postsecondary education (idem, 1975a, p. 70).

The Commission on Postsecondary Education, a 1202 commission, has coordinating and planning responsibilities for postsecondary education within the state (Alaska Stat. Ann., §§14.40-901 to 915, 1974). To date the state has no master plan for higher education; however, one is in the developmental stages.

Statutory Law

The not-for-profit corporate law covers corporations established for educational purposes (idem, §10-20.005, 1968). Educational corporations may not offer a course of study without the approval of the commission of education (idem, §14.47.100 et seq.) who is authorized to set standards (idem, §14.47.110, 1964) in the following areas: the quality of courses offered, the adequacy of facilities, the financial stability of the institution, the qualifications of the personnel, and the level of administrations standards (idem, §14.47.120. 1964).

Alaska provides several benefits to private institutions. The law grants the use of eminent domain powers for such "public uses" as "public buildings belonging to the state or a college or university" (idem, §09.55-240(9), 1972). The state also exempts property of non-profit educational corporations from taxation (Alaska Const. Art. 9, §4, 1959). Scholarship loans are provided to state residents attending an accredited institution within or out of the state (Alaska Stat. Ann. §14.40. 751, 1974). Alaska also provides tuition grants, not to exeed the difference between public and private institution tuitions, to students attending private institutions in the state (idem, §14.40.786, 1974). When private institutions enter a consortium agreement with Alaska's public sector, they must agree to accept decisions of the legislative council to settle disagreements between the contracting

parties (idem, § 14.40.801(c), 1974).

California

Summary. California has 118 public and 104 private institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Private institutions enroll 10 percent of the state's total population of students in higher education (idem, 1975a, p. 70). The California Postsecondary Education Commission coordinates the public sector and develops plans involving private higher education (Calif. Ann. Educ. Code, §§22710 to 22716, West. 1974). The master plan deals with both the public and private sectors of postsecondary education within the state.

Statutory Law

The general nonprofit corporate law governs the formation of all nonprofit corporations including educational corporations (Calif. Ann. Corp. Code, §9200 et seq., West, 1974). California has specific laws governing educational corporations and their certification (Calif. Ann. Educ. Code, § 29001 et seq., West, 1974). The law provides for the formation of a Council for Private Postsecondary Educational Institutions to monitor certification of degree programs at private institutions (idem, § 29005, West, 1973). An institution may be certified to award degrees: by showing that they have accreditation from a regional or national accrediting association; by a determination that the faculty qualifications, curriculum, and facilities are of a quality equal to established institutions; or by receiving recognition from the U.S. Office of Education after appropriate disclosure of administrative policies and practices (idem, § 29023, West, 1974). The

attorney general will investigate violations and take appropriate action (idem, § 29045, West, 1974). The intent of this legislation is: to encourage privately supported education, to protect the integrity of degrees, and to encourage the public institutions' recognition of the private institutions's conferred degrees (idem, § 29046, West, 1974).

The California Postsecondary Education Commission has the responsibility of coordinating public higher education within the state (idem, §§22710 to 22716, West, 1974). The commission is directed to develop a five-year plan with annual updates for postsecondary education that will consider programs and resources of the private sector. (idem, §22712(2), West, 1974).

California nonprofit educational corporations are exempt from taxes on items used for educational purposes (Calif. Const. Art. 13, §1A, West, 1962; see also Calif. Ann. Rev. & T Code, §203, West, 1973). The State Scholarship and Loan Commission coordinates loan and scholarship programs (Calif. Ann. Educ. Code., §31201 et seq., West, 1969). The scholarship program is available to students attending public or private institutions. Opportunity grants are also available to students in both sectors (idem, §§ 31261 to 31265, West, 1970). The state also has a fellowship program for graduate students enrolled in public or private institutions (idem, §31240.5, West, 1971). The graduate fellowship act states

> that it regards the collegiate education of its qualified citizens to be a public purpose of great importance . . . [and] that it does not intend this chapter to be construed as granting any

> present and future rights to the legislature; or any other instrumentality of the state, to control or influence the policies of any educational institution involved in the state scholarship program [ibid.]

The state is authorized to enter into contracts with private medical schools for services or to increase their enrollment for state citizens (idem, §31285,1 et seq., West, 1973).

Master Plan

The Report of the Joint Committee on the Master Plan for Higher Education, published by the California Legislature in 1973, contains recommendations affecting private higher education. The plan recommends regional cooperative arrangements involving public and private institutions (California Legislature, 1973, p. 8). In the area of governance the plan recommended the establishment of a coordination and planning commission--the California Postsecondary Education Commission--for public and private postsecondary education (ibid., p. 27). The commission, which was established in 1974, provides an inventory of all academic programs on and off campus and is an informational clearinghouse for the system (ibid., p.27).

The section on Independent Higher Education reaffirms the state's responsibility to assure the survival of private higher education. The plan states that

> The conflicting values of state responsibility and institutional autonomy are probably best reconciled

> with the continuation and expansion of current programs which channel funds through students rather than directly to institutions. The Joint Committee has concluded that this approach has educational and economic merit. Channeling aid through the consumer also increases student options [ibid., p. 65].

The plan recommends the increased funding of the Graduate Fellowship Program (ibid., p. 73) and raising the number of state scholarships to aid private colleges (ibid., p. 72).

A subsequent report entitled Independent Higher Education in California: Development of State Policy, was published in 1974. This report outlines the process of defining a public policy regarding private higher education's role in the state and of evaluating the current financial status of private higher education. The report reached two basic conclusions: (1) "A systematic analysis of objectives, programs, and criteria should precede any major changes in levels of state aid to independent higher education" and (2) "the character and accuracy of data indicating financial conditions should be improved" (Independent Higher Education in California, 1974, p. i).

The report sets out criteria for analysis and procedures to be followed. It recommends continued funding but no increased funding until the systematic analysis of programs and the financial data are made available from the Postsecondary Education Commission (ibid., p. 21).

Connecticut

Summary. Connecticut has 21 public and 25 private postsecondary educational institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 38 percent of the total enrollment in postsecondary education in the state (idem, 1975a, p. 70). The Commission for Higher Education was established to coordinate and develop plans for public and private postsecondary education (Conn. Gen. Stat. Ann., §§ 10-322 to 10-326 et seq, 1965). The state's master plan deals with both public and private higher education.

Statutory Law

The not-for-profit corporate law covers the establishment of nonprofit corporations, including those for education purposes (idem, § 33-419 et seq., 1959). The Commission for Higher Education is responsible for the licensing and accreditation of programs and institutions of higher learning (idem, § 10-324 (A-5), 1972). The commission establishes requirements for licensing or certification. Private nonprofit educational institutions cannot award degrees unless certified by the commission or a regional accrediting association. A fine can be levied for violation of this act (idem, §10-330, 1969).

The Commission for Higher Education is directed to develop a five-year plan for the state's postsecondary system (idem, § 1-324(b), 1972). The plan is: set goals for the system of higher education; establish roles for constituent institutions; design more efficient utilization of facilities and plans for new facilities; develop means to avoid duplication; and consider the long-range plans of independent colleges in Connecticut (ibid.).

The state provides several benefits to the private sector. Private nonprofit educational corporations are exempt from taxation on property and donations (idem, § 12.81(8), (9), 1971).

The state provides direct grants to private institutions based on the number of state citizens enrolled (idem, §§ 10-331a to 10-331H et seq., 1972). Of the monies received by the institutions, 80 percent must be used for financial aid to Connecticut students (idem, § 10-331f, 1972). The state also offers a scholarship for citizens enrolled in special education programs in the public or private sectors (idem, § 10-333, 1967) and sponsors a guaranteed loan program for students enrolled in the public or private sectors (idem, § 10-334, 1965). The state also provides bonds for financing facilities at public or private institutions (idem, § 10-337, 1965).

The state has authorized the commission to establish regional centers to develop "concurrent and cooperative use of two or more state institutions" (idem, § 10-326a, 1969). The centers are authorized to enter into cooperative arrangements with private institutions (idem, §326c, 1969). The commission is also authorized to enter into contracts with independent colleges for programs, facilities, and services. The law states:

> In order to secure for the citizens of Connecticut the additional advantages which would accrue under more widely coooperative arrangements between public colleges and the independent colleges, the Commission for higher education is authorized to enter into contracts with the independent colleges. Such

> contracts shall encourage, promote and coordinate educational developments which are mutually beneficial to the citizens of the state and the independent colleges, increase the use of available facilities, prevent the duplication of expensive and specialized programs, and further motivate cooperative efforts by the public system of higher education and the independent colleges to direct their work to the solution of contemporary societal problems [idem, §10-326f (a), 1972].

Master Plan

Connecticut's plan, entitled, Master Plan for Higher Education in Connecticut 1974-1979, makes several recommendations that involve or require action by the private sector.

1. The commission requests that independent institutions submit a mission statement (Commission for Higher Education, 1974, p. 157).

2. Public funds should be used for cooperative programs sponsored jointly by public and private institutions, including administrative services (ibid., p. 158).

3. The private sector should attempt to meet the needs of new student clientele, especially part-time students (ibid., p. 160).

4. The Subcommittee on Coordination and Planning should include a representative from the private sector (ibid, p. 162).

5. The Commissioner for Higher Education should be given authority to contract with public or private institutions to develop programs of a nontraditional nature (ibid., p. 168).

6. Financial-aid programs should be revised so that more adults and part-time students can qualify for aid (ibid., p. 169).

7. The public and private sectors should develop equitable transfer policies to allow students mobility among types of institutions within the state (ibid.).

8. All institutions should increase their recruitment of minorities (ibid., p. 171).

9. There should be increased funding for aid to students at private institutions (ibid., p. 177).

Illinois

Summary. Illinois has 50 public and 87 private postsecondary educational institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 26 percent of the total enrollment in postsecondary institutions (idem, 1975a, p. 70). The board of higher education is directed to coordinate public higher education and develop long-range plans for postsecondary education in Illinois (Smith-Hurd Ann. Ch. 144, §§181 to 192, 1967). Illinois master plans consider issues involving the state's private sector.

Statutory Law

The not-for-profit corporate act authorizes the formation of the not-for-profit corporations that serve an educational purpose (idem, Ch. 32, §§163a1 to 163a100, 1951, see especially §163a3, 1971). The Illinois law also dictates the procedures and regulations of establishing institutions of learning (idem, Ch. 32, §§13 to 17, 1949). The trustees of the institution are given the power to award degrees for programs

that have been certified by the state (idem, §4, 17, 1949). The institution must file an application with the superintendent of public instruction before it can be incorporated and allowed to award degrees (idem, Ch. 144, §§ 121 to 135, 1964). The application must contain, among other things, its purpose, fees to be charged, qualifications of the teaching staff, and degrees to be awarded (idem, §123, 1945). The superintendent is authorized to inspect the institution (idem, §123, 1945), and revoke the certification after a hearing and notification have been completed (idem, §125, 1945, §126, 1945).

The state board of higher education is directed to define the role of private higher education within the state (idem, Ch. 144, §191, 1961). The board is also directed to develop plans for medical education (idem, §186.1, 1965) and for an information system for the public sector (idem, § 186,2, 1967).

The state provides certain benefits to private institutions. Not-for-profit educational institutions are exempt from use tax (idem, Ch. 120, §439,3, 1967). The Educational Facilities Authority issues revenue bonds for educational facilities construction at private institutions (idem, §§1301 to 1323, 1969). The state also allows public institutions to enter into interinstitutional contracts for programs with the private-sector institutions or to set up corporations that sponsor such programs (idem, §§ 281 to 285, 1972). The state will issue grants-in-aid for such programs (idem, § 284, 1974). The state also awards grants to private institutions providing medical, dental, nursing, and allied health programs (idem, Ch. 111-1/2, §§ 821 to 829, 1971).

Master Plan

The first master plan in Illinois, entitled A Master Plan for Higher Education in Illinois, was published in 1964. In this plan the board discusses the citizens' need for freedom of choice through a diversity of institutional types (Board of Higher Education, 1964, p. 7). The plan notes that 83 percent of the funds for the state scholarship program went to students enrolled in private institutions (ibid., p. 25). The plan recommended that private higher education personnel continue to serve on advisory and study committees developing future master plans (ibid., p. 68).

The second master plan, entitled A Master Plan: Phase Two, was published in 1966. This plan notes the need for cooperation from the private sector in order to accommodate the increasing demand for higher education (Board of Higher Education, 1966, p. 22). The plan noted that despite the large sums of money made available to New York's private institutions, their share of the enrollment declined. Therefore, no savings were accrued by funding the private sector, because new public institutions were still required. The plan, however, argued that even in light of the New York experience, funding to aid students in the private sector would be a sound investment for the state and would allow private institutions to maintain high admission standards (ibid., p. 26).

The third plan, entitled A Master Plan: Phase III, was published in 1971. This plan's purpose was to "[d]evelop recommendations to establish an integrated system of higher education, one state-wide network, calling upon and utilizing to the fullest extent possible the

resources pf public and private colleges and universities" (Board of Higher Education, 1971, p. 9).

The plan recommends that financial assistance programs to private institutions be increased to assist the private sector in reaching its enrollment capacity (ibid., p. 28). Another recommendation deals with the development of an integrated system in Illinois to utilize resources in both sectors (ibid., p. 11). To this end the plan recommends the formation of an advisory committee to assist the board in establishing a library and learning resource network (ibid., p. 40). The plan also advocates the development of a state-wide computer network (ibid., p. 44).

In developing better utilization of resources the plan recommends methods of implementing "a Collegiate Commom Market that utilizes the existing and developing resources of the public and private sectors to broaden and maximize educational opportunities and reduce duplication" (ibid,. p. 11). The plan further defines the Collegiate Common Market:

> Possibilities for coooperative programs among the public and private colleges and universities include the broad utilization of high-cost educational resources, such as computers, libraries, and graduate programs, the sharing and interchangeability of special institutional capabilities, such as faculty, programs, and facilities to provide wider educational or community services to the region. Some examples include:
>
> Distinguished professorships with lectures on all campuses.
>
> Faculty rotation plan for academic terms.
>
> Part-time faculty among cooperating colleges.

Inter-library plan.

Audio-visual pool and closed circuit television.

Intercollegiate class attendendance privileges.

Major facilities sharing.

Intercampus transportation.

Intercollegiate tours abroad.

Community Cultural and Enrichment Program.

Married student villages.

Central intercampus health clinic.

Joint purchase and use of scientific equipment.

Student-teacher practice-training placement.

Common student health and accident insurance.

Common faculty-staff insurance.

Cooperative purchasing.

Cooperative graduate programs.

Trustee seminars and education.

Computers and data processing.

Contractual interchange for program offerings.

Intercampus special events.

While the ultimate objective of a common market is the statewide sharing of resources, programs, and opportunities, regional efforts may be the first step in many program areas. The task force of the Collegiate Common Market will develop recommendations for a framework to undertake many of the projects cited. [ibid., pp. 15-16].

Finally, the plan recommends a grant program for nonprofit schools similar to those provided for health programs in the private sector.

The Master Plan, Phase IV had not been released for publication at the time of this writing. However, a status report published by the board in 1974 indicates that an extensive study of the financial conditions and financial aid programs to private institutions will be included.

Kentucky

Summary. There are eight public and 28 private institutions in the state of Kentucky (U. S. Department of Health, Education and Welfare, 1975, p. xxii). The private sector enrolls 17 percent of Kentucky's students in higher education (idem, 1975a, p. 70). The Council on Public Higher Education coordinates the public institutions in the state (Ky. Rev. Stat., §164.010. 1972). The council is directed by law to develop a comprehensive plan for public higher education in Kentucky (idem, §164.02-, 1972). The planning document was in draft form and not available for analysis at the time of this study.

Statutory Law

Kentucky's law regarding not-for-profit corporations governs those corporations founded for educational purposes (idem, §§273.161, 273. 390 et seq., 1971; see also §273,167). The state code sets guidelines for the certification of degree programs (idem, §§ 164.945 to 164. 947 et seq., 1972). The purpose of this law is to approve bona fide colleges and universities and prevent fraudulent practices (idem, §164.946, 1972) The statute authorizes the Kentucky department of education to adopt regulations, standards and procedures for licensing private higher education institutions. The law states:

> Nothing contained in K.R.S. 164.945 to 164.947 is intended in any way nor shall be construed to regulate the stated purposes of non-public colleges or to restrict religious instruction or training in a non-public college [idem, §164.947(2), 1972].

The state affords certain privileges to the private sector. One is that of eminent domain. According to notes 38 and 39 (Ky.Const. Art. 22, 1971), the state legislature can give condemnation powers to private institutions that it deems to be serving the public good (see also Ky. Rev. Stat., §416.010 et seq., 1971). Private nonprofit educational institutions are exempt from property tax (Ky. Const. Art. 170, 1971). The Council on Public Higher Education is given the power to enter into contracts with individuals or agencies for services including but not limited to; programs of research, socialized training, and cultural enrichment (Ky. Rev. Stat., §164.020(11), 1972). Students in private institutions are eligible for tuition grant and student loan programs (idem, §§164.740, 164.785. 1972).

Master Plan

The state's comprehensive master plan was unavailable, but the Council on Public Higher Education provided a document entitled Licensing of of Non-Public Colleges (1975). Although the state board of education is given statutory responsibility for setting guidelines for licensing, they have agreed to have the Council on Public Higher Education assume the task. The licensing procedures govern all institutions established

after March 25, 1972. Degree-granting institutions with "college" or "university" in their name are not affected by this law. A license will be granted by the council if the institution is accredited by an agency recognized by the U.S. Office of Education or accepted by the Council on Public Higher Education for as long as accreditation is maintained. A nonaccredited college applying for a license must provide the following information to the council: evidence of financial stability; a surety bond on file with the council (amount based on enrollment); the qualifications of administrative officers, directors, owners, and the faculty; the type of facilities and equipment; the library facilities for each program and supervision of procedures for curriculum revision; the degree of supervision and support of programs; and a visit by the council to campus. In each of the above areas the council has set minimum standards the college must maintain. The law also sets guidelines for advertising, recruitment, and contents of the college catalog, among others. It also provides procedures for appealing a council decision to revoke a college license.

The council includes information on several consortiums formed by public and private institutions on a regional basis. Although the state has not given money directly to the private colleges or the consortiums, it has given money to the public institutions involved in the consortium for consortium programs.

Maine

Summary. Maine has 4 public and 14 private institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). Of the students enrolled in postsecondary education, 24 percent were

attending private institutions (idem, 1975a, p. 70). The board of trustees of the University of Maine not only coordinates all public postsecondary institutions, but also has some involvement with the private sector (Maine. Rev. Stat. 20, §2251). The state's master plan was developed by the Higher Education Planning Commission, a 1202 commission concerned primarily with facilities. However the plan deals with all aspects of higher education, including the private sector.

Statutory Law

Maine's laws on "corporations without stock" include educational corporations (idem, 13, §901 et seq., 1954). The secretary of state must receive a copy of the corporate bylaws and constitution (idem, 13, §903, 1954). Applications for the certification of degree programs are made with the state board of education. The criteria used to evaluate programs are: adequacy of facilities; qualifications of faculty; character of programs; requirements for the degree; admissions policies; financial resources; and governing policies of the institution. On the basis of the evaluation the state legislature, where appropriate, will give approval to the institution to award degrees (idem, 20, §§2202, 2203, 1973).

The board of trustees of the University of Maine has control over public institutions. However, the law defines several ways in which the public and private sectors must work together (idem, 20, § 2251, 1967). The law recommends: (1) that the higher education needs of the state be met either through public institutions or through cooperative efforts with the private institutions (idem, 20, §2251 (4), 1967); (2) that existing or new private institutions be encouraged to continue

or be established where studies justify such action (idem, 20, §2251 (5), 1967); §(3) that cooperation between the public institutions and private institutions be encouraged to further develop educational programs and services within the state.

Real estate of colleges authorized to confer degrees is subject to taxation. However, upon payment of the tax, the college will receive a rebate not to exceed $1500 (idem, 36, §652. 1963). Nonprofit educational institutions are exempt from sales, storage, or use tax (idem, 36, §1760, 1963).

Financial aid to the private sector is provided to students. The state has a tuition equalization program that awards grants-- based on financial need-- to students attending private institutions (idem, 20, §2311 et seq., 1973). The student loan program includes students in both the public and private sctors (idem, §2231, et seq., 1968).

Master Plan

Maine's master plan, Higher Education Planning for Maine, involves the private sector. As one of its objectives the plan lists "entering into an agreement with other institutions, agencies and industry to enrich educational resources" (Higher Education Planning Commission, 1972, p. 24, # 1.4). Student and faculty exchanges between all institutions, public and private, are encouraged in order to promote institutional specialization in high-quality programs while protecting diversity of opportunities. Graduate education and research lend themselves to such cooperation. The plan recommends: (1) a "trustee forum" of governing boards of private institutions to consult with the University of Maine trustees in determining areas of cooperation (ibid., p. 25, #19); (2) a joint project to recruit minority faculty and students (ibid., p. 25,

#20); (3) contracts with private colleges and universities to enroll students from public institutions in specific courses (ibid., p. 25, #21); (4) a "partnership" between one or more private colleges in graduate study (ibid., p. 26, #24); (5) joint utilization of certain services, such as television and computer (ibid., p. 26, #25).

Massachusetts

Summary. This state has 31 public and 87 private postsecondary institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector has 58 percent of the students attending postsecondary institutions (idem, 1975a, p. 70). The board of higher education coordinates public institutions of higher education (Mass. Ann. Ch. 15, §1D, 1973). The state is in the process of developing a master plan that will deal with both public and private higher education.

Statutory Law

The state law governing educational corporations establishes who may form an institution of learning (idem, Ch. 180, §1, 1971). The personal property of educational corporations incorporated in Massachusetts is exempt from taxation (idem, Ch. 39, §5 (1830) along with real property occupied for charitable or educational purposes (idem, Ch. 59, §5, 1880).

The board of higher education has the responsibility of approving all degree programs (idem, Ch. 69, §30, 1965), and has the right to visit the institution within 12 years after receipt of its charter (idem, §30, 1965). Should an institution cease, the board of higher education would assume control of its records (idem, Ch. 69, §31, 1965).

The state board of education is charged with promoting the best interests of public higher education within the state (idem, Ch. 15, §1D, 1973), and includes one representative of the private sector (idem, Ch. 15, §1A, 1973). The board is also directed to organize an information center with data from both the public and private institutions (idem, Ch. 15, §1D, 1973). Scholarships are given to students enrolled in public or private institutions within the state (ibid.). The law also provides that the trustees of state colleges and the University of Massachusetts can contract with any institution to provide services (idem, Ch. 73, §14, 1973; Ch. 75, §11, 1973).

Master Plan

In a document entitled Procedures for Guiding the Rate and Direction of Growth 1974 Update as a Part of the Board of Higher Education Planning Process, the board of higher education outlines the processes to be used in developing a master plan. This document discusses the role the private sector has played in higher education within the state, a role that must be considered in any planning process (Board of Higher Education, 1974, p. 5). According to the board, the objectives of the master plan should be the coordination of educational programs to ensure the maximum number of programs available to citizens, to avoid unnecessary duplication, to coordinate manpower needs, and to protect the public interest (ibid., p. 34). The document also discusses the need for a scholarship program providing residents a choice among a diverse range of institutional types and programs (ibid., p. 55).

Minnesota

Summary. This state has 26 public and 36 private postsecondary institutions operating within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). 12 percent of the students in higher education are enrolled in the private sector (idem, 1975a, p. 70). The Minnesota Higher Education Coordinating Commission is charged with coordinating postsecondary education within the state (Minn. Stat. Ann. Ch. 136A.01 et seq., 1965). Although state master plans do not exist, the commission submits biennial reports to the legislature containing information on the current status of postsecondary education and makes recommendations for the biennium.

Statutory Law

The state's not-for-profit corporate law governs the foundation of educational corporations with the state (idem, Ch. 300, 1905). All colleges and universities are exempt from property tax (idem, Ch. 272. 02, 1978; Minn. Cost. Art. 9, §1, 1951) and income tax (Minn. Stat. Ann. Ch. 290.05, 1951). The trustees of an incorporated college have the power to prescribe courses and award degrees, but are subject to visitation by the Commission on Education (idem, Ch. 121.18, 1951).

The Minnesota Higher Education Coordinating Commission has the coordinating and planning responsibilities for all higher education within the state. Specifically, the commission is responsible for continuous study, analysis, and long-range planning for the public and private sectors. It sets priorities with respect to plans and programs at state institutions (idem, Ch. 136A.04, 1965). The law requests all public and private institutions to cooperate with the

commission (idem, Ch. 136A.05, 1965), and requires the commission to report to the governor, the legislature, and all public and private institutions annually (idem, Ch. 136A.07, 1965).

In the area of financial aid the commission can award scholarships to students attending public and private postsecondary institutions (idem, Ch. 136A.09-13, 1967). The commission is also authorized to enter into contracts with private institutions to provide more educational opportunities for state residents. The program is designed to maximize the facilities in the private sector by giving an institutional grant for each state resident enrolled in the institution above the 1970 figure and a grant to each low-income resident enrolled in private institutions (idem, Ch. 136A.18. 1971). Finally, the Higher Education Facilities Authority is authorized to provide bonds for construction and renovation in both sectors of higher education (idem, Ch. 136A,25, 1971).

Master Plan

Although the state does not have a master plan both the 1973 report, Responding to Change, and the 1975 report Making the Transition, deal with the private sector. Both plans encourage cooperation in the gathering of data concerning institutions within the system. Both emphasized the need for regional cooperation and consortiums. The plans discuss several existing programs.

One, called Tri College University, involves North Dakota State University, the University of Minnesota-Moorhead, and Concordia College. All three institutions are located in the Fargo-Moorhead metropolitan

area on the western border of Minnesota. A student can take courses at any of the three colleges at no extra cost. Several other consortiums involving public and private institutions exist in the state, and the commission is encouraging more (Minnesota Higher Education Coordinating Commission, 1973, p. 60; 1975, p. 81-85).

The 1975 report discusses the future of the state contracting program. The report cites the declines in enrollment in Minnesota public higher education (idem, 1975, p. 98). In light of this decline, the commission recommends that the contract program be continued at its present level (ibid., p 99). In doing so, the commission acknowledges the importance of the private sector (ibid., p. 98), while fulfilling its responsibility to maintain a strong public sector.

New Hampshire

Summary. New Hampshire has 10 public and 15 private postsecondary institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p.xxii). The private institutions educate 42 percent of the students enrolled in higher education (idem, 1975a, p. 70). The Postsecondary Education Commission has planning and coordinating responsibilities for higher education within the state (N. H. Stat. Ann. §§188-D to 188-D:10, 1973). The state's master plan, A Plan for Postsecondary Education in New Hampshire, was publsihed in 1973 and deals with both public and private higher education.

Statutory Law

Educational institutions are covered under the not-for-profit corporate law (idem, §292:1 et seq., 1969). There are specific laws governing the approval of degree programs by the Postsecondary Education Commission

for Colleges and Universities (idem, §292:8-A et seq., 1973). These laws cover institutions that have been in operation less than three years (idem, §292:8-FF, 1973). The commission must approve an institution on the basis of plans containing information on facilities, quality of program, qualification of faculty, and financial stability (idem, §292:8-D, 1973; §292:8-F, 1973). The commissioner recommends approval of the institution's degree program, and legislative action is required before degrees may be awarded (idem, § 292:8-H, 1973). The commission has injunctive relief for noncompliance with this act (idem, § 292:8-J, 1973). The buildings and property of nonprofit education corporations are exempt from taxes (idem, §72:23 IV, 1969).

The Postsecondary Education Commission is composed of members from both the public and privater higher education (idem, §188-D:1, 1973). The commission is directed to conduct studies and develop plans in order to avoid duplication and utilize effectively the state's educational resources (idem, §188-D:9, 1973).

Master Plan

The state's master plan investigates the financial condition of private institutions. Based on the data provided by these institutions, the study shows that private institutions were in poorer condition in 1972 than they were in the previous year (Sackett, 1973, p. 60). The report concludes that the 12 colleges (except Dartmouth) could not withstand many more losing years (ibid., p. 60). However, the plan supports a tuition subsidization program to students in the private sector only if it does not come from State University System allocations (ibid., p. 87; see also pp. 67 to 73). The report recommends a long-term

commitment to subsidize resident students enrolled in professional programs not provided by the public university system (ibid., p. 87). The plan also recommends that public and private colleges operate on a uniform calendar to allow joint ventures in the utilization of programs and facilities (ibid.) and that the private colleges wishing to offer courses in continuing education do so in cooperation with the appropriate school in the university system (ibid., p. 89). Finally, the plan recommends that the three Catholic colleges in the Manchester area either consolidate or increase coordination so that they may more effectively participate in the Merrimack Valley Branch Community College and Continuing Education Center (ibid., p. 90). The plan notes that New Hampshire currently has a contract with Dartmouth College to provide professional training not provided in the state system, (ibid., p. 70).

New Jersey

Summary. There are 28 public and 31 private institutions of higher education in New Jersey (U. S. Department of Health, Education, an Welfare, 1975, p. xxii). The 31 private institutions educate 26.5 percent of the state's student population in higher education (idem, 1975a, p. 70). The board of higher education, established in 1966, coordinates all institutions in the public and private sector. The board issued Goals for Higher Education in New Jersey as Phase II of its master plan in 1974, and is now working on Phase III. Both phases I and II deal with the public and private sectors.

Statutory Laws

Institutions of learning are governed by the provisions of the New Jersey not-for-profit corporation laws (N.J. Stat. Ann. §§15-11-1 et seq., 1924). Educational institutions, public and private, may acquire land through statutory condemnation proceedings (idem, §15-11-8, 1924). No corporation created since April 1, 1887, may grant a degree or diploma of graduation or proficiency within the state unless it has filed a certified copy of its articles of incorporation with the board of higher education, and obtained a license to operate as an educational corporation from the board (idem, §18A:88-3, 1966). The state attorney general may, in a civil action, restrain the operation of any educational corporation which has not first obtained a license from the board (idem, §18A:68-5, 1966). The board can revoke any license it has granted (idem, §18A:68-7, 1966). In addition, the board exercises general visitorial powers of supervision and control over those institutions it licenses. These powers include the right to visit licensed institutions, to examine the manner in which they conduct their affairs, and to enforce observance of the state laws (idem, §18A:3-14 (R), 1972).

The department of higher education, headed by the board, was formed to encourage cooperative programs for institutions of higher education and to coordinate state and federal activity (idem, §18A:3-3. 1966). Of the 18 members of the board, one member is appointed to represent the private sector (idem, §18A:3-13, 1966). The board is required to conduct research on higher education needs and to "develop and maintain a comprehensive master plan which shall be long range in nature and be regularly revised and updated"' (idem, §18A:3-14, 1972).

New Jersey exempts property of educational institutions from taxation. including tax on any income or profit so long as the income or profit is used for educational purposes (idem, §54:4-36. 1967). The state also provides financial aid to the private sector through a combination of contracts, grants, facilities, loans and student aid. The board is authorized to pay annually to private institutions $300 per New Jersey student enrolled (idem, § 18A:72B-4, 1972), and $600 per student in excess of the prior year's enrollment of New Jersey resident students (idem, § 18A:72B-5, 1972). The board may contract with private institutions to provide specialized graduate and professional programs that would reduce or eliminate the need for the state to create such programs (idem, § 18A:72B-6, 1972), and the board may provide private institutions with computer, library, and other services available to public institutions (idem, § 18A72B-7, 1972).

Direct grants for supplementary educational programs and for tutoring and educational aid to minorities are authorized under the Educational Opportunities Fund Program (idem, §18A:71-28, 1968). The State Educational Facilities Authority may issue tax exempt bonds for construction of public and private educational facilities. The preamble to the educational facilities authority law sets out the state's educational objectives:

> It is hereby declared that a serious public emergency exists affecting and threatening the welfare, comfort, health, safety and prosperity of the people of the state and resulting from the fact that financial resources are lacking

with which to construct required dormitory and other educational facilities at public and private institutions of higher education; that it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities; that it is essential that institutions of higher education within the state be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities; that it is essential that all resources of the state be employed in order to meet the tremendous demand for higher educational opportunities; that all institutions of higher education in the state both public and private, are an integral part of the total educational effort in the state for providing higher educational opportunities, and that it is the purpose of this chapter to provide a measure of assistance and an alternative method to enable institutions of higher educations in the state to provide the facilities which are sorely needed to accomplish the purposes of this chapter, all to the public

> benefit and good, to the extent and manner provided herein [idem, § 18A:72A-1, 1966].

Aid to students is developed under four programs: competitive scholarships for up to 5 percent of graduating high school seniors to attend public or private institutions (idem, §18A:71-1, 1959); incentive grants for scholarship holders attending schools whose tuition exceeds $500 annually (idem, § 18A:17-16, 1966) and tuition-aid grants based on financial need to students of New Jersey institutions whose tuition exceeds $450 annually (idem, §18A:71-28 et seq., 1968) and a County College Assistance program for junior college students who transfer to four-year public or private institutions.

Master Plan

Phase I of the New Jersey Master Plan for Higher Education was published in January 1970, under the title Goals for Higher Education in New Jersey. The plan is based upon the premise that the New Jersey system includes all institutions, public and private, at all levels of higher education (New Jersey Board of Higher Education, 1970. p. 7). One of the major goals of the Master Plan is "to foster an integrated system of public and private institutions" (ibid., p. 12).

> The fact that the New Jersey system of higher education includes all organized programs conducted by institutions chartered bt the state implies both a goal of planning, to foster and integrated system of public and private institutions, and a concomitant responsibility on the part of a system, and must formulate its own plans

cooperatively with other institutions and the system as a whole. Similarly the state must recognize its responsibility to nurture all institutions in the system, and exercise its powers to encourage needed developments, to discourage unsound expansion, and to effect coordination and articulation among individual institutions as well as between the private and public sectors.

Public and private institutions differ in certain important ways, and these differences must be respected. Moreover, each institution-- public or private--has a unique role to play. Nevertheless, all colleges and universities, whatever their history or pattern of governance, must contribute to their maximum within the framework of the system if the state is to meet its educational needs in the years ahead. This integrated system must sustain the proper balance between cooperation and coordination on the one hand, and initiative and independence on the other.

As each institution contir es to develop its own identify, it must guard against rigidities which hinder its ability to change. Higher education must be sensitive and responsive to social change, as must professional associations and other institutions which establish standards for education

> programs. New Jersey colleges and universities must be open to new techniques and approaches to teaching, research, public service, and institutional governance. To remain vital, the New Jersey system of higher education must constantly strive to find new ways to improve itself.

Phase II of the Master Plan, entitled A Development Plan for Higher Education in New Jersey, was issued in 1974, and deals with enrollment projections and the mission of the various segments of the higher education system. One of the major recommendations of this plan is the that state funds should flow to private colleges and universities as vital participants on the state's system of higher education (New Jersey Board of Higher Education, 1974, p. 10). The justification of expenditure of public funds for private institutions is that independent colleges and universities are institutions imbued with a public trust:

> The Board of Higher Education considers that every institution of higher education, whether blic or independent, performs a public service. Like their public counterparts, the independent colleges and universities serve the public interest by developing the ability of students to be productive members of society and effective citizens of the state and nation. The contributions which these institutions make to the economic, professional, cultural, social and civic life of this state are incalculably great, both financially and

> in terms of human values. In one sense, therefore, judged by services they render to the public welfare, the independent colleges and universities are "public" institutions. They are, in fact, imbued with a public trust [ibid. p. 33].

In order to exploit the independent higher education resources in the state, the board establishes the following objectives of aid:

> 1. To maintain and strengthen the present contribution of the independent colleges and universities to the state's higher education effort.
> 2. To increase the number of spaces available to New Jersey residents in a manner that would cause New Jersey's citizens the least additional capital expenditures.
> 3. To assist students from New Jersey's lower income families, especially those who are members of the minority groups, in enrolling in independent colleges.
> 4. To lower educational costs to students, for this would increase the potential number of applicants to independent colleges.
> 5. To reduce the effective operating costs per student through increased utilization of resources for this would thereby contribute to the long-term financial strength of the independent colleges [ibid., p. 35]

In considering the establishment of new state colleges, the plan recommends that full-time undergraduates at each public four-year college should be limited to 7,500 students. The board felt that with changing enrollment patterns and increased enrollment-incentive aids to independent colleges, the establishment of new colleges might be unnecessary (ibid., p. 45).

New York

Summary. New York has 80 public and 179 private institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions have 38 percent of the enrollment in postsecondary institutions within the state (idem, 1975a, p. 70). The University of New York is composed of all educational institutions, public and private, within the state (N.Y. Educ., §§ 2201 to 237, McKinney, 1969). The regents for the university have supervisory and coordinating responsibilties for member institutions (See also N. Y. Const. Art. 5, § 4, McKinney, 1962). The state's master plan was developed for the coordination of the University of New York.

Statutory Law

New York's nonprofit corporate law covers the establishment of religious, charitable or educational corporations (N.Y. N.P.C.L.,§§ 101-114, McKinney, 1970). The law governing educational corporations supercedes the N.P.C.L. law where they conflict (N.Y. Educ. 216, McKinney, 1973; see gen. § 201 et seq., McKinney, 1969). No educational institution can be established, allowed to confer degrees, or continue in operation without the approval of the board of regents nor can its degree programs be certified without regents' approval of its resources

(minimum of $500,00), provisions, and program (N.Y.Educ., §218, McKinney, 1971). The regents also can revoke the charter with sufficient cause and they have visitation rights over institutions under their control (idem, §219, McKinney, 1952; §215, McKinney, 1947). Several educational institutions do not fall under the stipulations of this law but are still under regents control. They are the Alfred University, Cornell University and City College of New York.

The Regents for the University of New York is probably the most powerful organization of those studied. It has the power to visit and inspect, to revoke charters, to approve and certify degree programs, to develop a master plan for higher education, and to require each college or university under its authority to submit a master plan for the institution's development (idem, §201 et seq., McKinney, 1969). The regents are directed to develop a master plan for the University that will consider the institutional plans for both public and private institutions within the University along with defining the missions of institutions (idem, §237, McKinney, 1971).

New York provides certain benefits to private institutions. Real or personal property used for religious, educational or charitable purposes is exempt from taxation and no statutory law may take away this exemption (N.Y. Const. Art. 16, §1, McKinney, 1939; see also N.Y. Tax, §412, McKinney, 1971). They are also exempt from sales tax (N.Y. Tax, §1116(a) (4), McKinney, 1965). Educational corporations are given the power to eminent domain to operate their own water works (N.Y. Educ., §227, McKinney, 1969; N. Y. Condemn. §4, McKinney, 1967). New York provides loans to students attending regent-approved

institutions (N.Y. Educ., § 651, McKinney, 1969) The state also offers a Regents' Competitive Scholarship, general-purpose grants, and special-purpose grants to students enrolled in program other than theology or religion at regent-approved institutions in the state (idem, §§601 to 609, McKinney, 1969; § 610, McKinney, 1969; § 620, McKinney, 1971). The law provides for direct aid to private institutions (idem, §6401, McKinney, 1973). The state is also authorized to give enrollment grants to students in private medical and detal schools (idem, §6403, McKinney, 1974).

The commissioner of education is authorized to enter into a contract with a private institution provided the institution is incorporated within the state, granting one or more degree programs, meeting regents standards for certification, elegible for state aid under the United States Constitution, and a financial statement with the state (idem, §6401, Mckinney, 1973). The commission can also contract with private institutions for special testing, counseling, and tutorial services (idem, §6451, McKinney, 1973). The State University trustees are empowered to promote and participate in interinstitutional arrangements between nonpublic and public institutions of higher education (idem, §355(1) (g), McKinney, 1974).

Master Plans

This study analyzed two New York master plans. The first, entitled Education Beyond High School, was published in 1972. The plan makes a number od recommendations involving private higher education. One is for the development of a comprehensive system of postsecondary education that would decrease duplication, maximize use of facilities, and promote efficiency through interinstitutional cooperative ventures (Regents for the University . . ., 1972, p. 261). Another is for the development of

a planning and management information system for all postsecondary education (ibid., p. 262). In the area of undergraduate, graduate, and professional programs (ibid., p. 266) the plan discusses way to evaluate programs and eliminate duplication in light of the current enrollment and manpower projections. This involves assessing programs currently available in both sectors in the state and taking action accordingly.

In the area of facilities the plan recommends that private institutions reevaluate current construction plans and analyze ways to increase facilities utilization (ibid., p. 271). The regents felt that the future enrollment and financial picture made maintenance and debt service costs significant factors contributing to a potential crisis for private institutions (ibid., p. 236).

For the first time the Commission on Independent Colleges and Universities submitted their own master plan and subsequent recommendations. Five of the six recommendations were approved. They were:

1. that the State's Scholar Incentive Program be rapidly expanded to make collegiate choice between public and private institutions less decisively centered upon family economic circumstance.
2. that the private two-year colleges be admitted to full partnership status in the State's effort to expand its network of community-junior colleges by inclusion in the elegibility tables of the Bundy program.
3. that New York State's system of direct institutional aid (the Bundy Plan) be reaffirmed and its

> schedule of grants to private institutions funded, at the very least, at levels sufficiently high to reflect the erosion the program has suffered, through inflation, the past four years.
>
> 4. that the Regents Scholarship Program be continued as one of the principle vehicles for encouraging excellence and aspiriation among our young women and men.
>
> 5. that the Regents create a second scholarship program specifically reserved for successful community college and junior college graduates who wish to transfer to a four-year institution to complete a baccalaureate program [ibid.].

The regents would not reaffirm the principle of "categorical aid" to the private sector or that private institution engineering programs were eligible for such aid (Ibid., p. 237).

The regents' 1974 plan, entitled Postsecondary Education in Transition, deals with problems affecting all sectors of postsecondary education. In discussing programs the plan notes the current problems related to manpower and declining enrollments that require reevaluation of existing programs (Regents for the University . . . , 1974, pp. 8, 9. 10). In the health fields, the plan advocates the continued use of the private sector to meet the state's health manpower needs (ibid., p 11).

In the area of financial problems, the plan recommends full implementations of the tuition assistance program (ibid., p. 47), and the

development of a new institutional aid program to allow institutions to make adjustments to inflation without increasing tuition (ibid., p. 48). The plan also recommends the continuation of a private-institution aid program based on the number of degrees awarded (ibid., p. 52). The state education department is directed to study the issue of the state's role in providing aid to private institutions experiencing financial difficulties (ibid.).

In health professions education the plan recommends aid to private medical and dental schools to expand enrollments. The plan advocates a capitation aid program for private institutions providing health programs (ibid., p. 55).

The regents applauded programs in interinstitutional cooperation and will continue to encourage such programs through funding requests (ibid., p. 74). The plan also recommends that programs with low enrollment not be duplicated within a geographical area if the program is not essential to an institution's character (ibid., p. 75).

North Carolina

Summary. North Carolina has 56 public and 43 private postsecondary institutions (U. S. Departmen of Health, Education, and Welfare, 1975, p. xxii). Private institutions enroll 24 percent of the total enrollment in postsecondary institutions within the state (idem, 1975a, p. 70). the board of governors of the University of North Carolina is responsible for developing a coordinated system of higher education within the state (N.C. Stat., §116-1 et seq., 1971). The board is also charged with developing plans for public and private institutions (idem, §116-11 (1), 1971). The state is in theprocess of developing a five-year plan, but it was unavailable at the time of this research.

Statutory Law

North Carolina's not-for-profit corporation law governs, among others, the establishment of nonprofit corporations formed for educational purposes (idem, §55A-1, 1955). The board of governors of the University of North Carolina is empowered to prescribe standards for a postsecondary institution license to confer degrees (idem, §116-15, 1971). The board may revoke the license of any private institution failing to meet minimum standards (idem, §116-16(c), 1971).

The board of governors of the University of North Carolina, in consultation with private colleges and universities, is directed to prepare a plan for the state's system of postsecondary education (idem, §116-11(1), 1971), and to "assess the contributions and needs of the private colleges and universities of the state." All requests for financial aid by the private sector are reviewed by the board before presentation to state agencies including the general assembly (idem, §116-11(11), 1971).

In the area of benefits North Carolina nonprofit private educational institutions are exempted from property tax (idem, §105-278(1), 1939; N.C. Const. Art. 5, §2(3), 1971). The state also sponsors a contract program with private institutions administered by the board of governors. The terms of the contract provide that the state will pay a sum of money designated by the general assembly to private institutions for each North Carolina resident enrolled. The school agrees to provide a scholarship program each year for needy students equal to the amount received (N.C. Stat., §116-19. 1971). The State Education Assistance Program provides

a package of grants, loans, and work-study or other employment for residents of the state attending public or private North Carolina post-secondary institutions (idem, §116-201 et seq., 1971).

The state has a program of scholarships and loans for state students enrolled in the health services programs at accredited institutions (idem, §131-121, 1969). The North Carolina Generai Assembly has also enacted legislation grating direct aid to several private medical and detal colleges for the number of state students enrolled in their health services programs (Gen. Assembly Chs. 1006 and 1112, 1971).

Ohio

Summary. Ohioa has 33 public and 71 private postsecondary educational institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 25 percent of the total enrollment of Ohio postsecondary institutions (idem, 1975a p. 70). The Ohio Board of Regents is the body charged with governance of the state's public system of higher education and the coordination and planning for postsecondary education within the state (Ohio Rev. Stat., §§ 3333.01 to 3333.15 et seq., 1963). The state's master plan dealt with issues invôlving private higher education.

Statutory Law

The Educational Corporation laws govern the formation of nonprofit postsecondary education institutions (idem, §§ 1713.01 to 1713.09 et seq., 1953). Such educational corporations must have a certificate of authorization from the board of regents to operate in the state (idem, § 1713.02, 1971). The board is authorized to set standards for

certification (idem, §1713.03. 1967). The certificate can be revoked (idem, §1713.04, 1967), and the board can get a restraining order against any institution that awards degrees without the certificate (idem, §1713.06, 1967).

The Ohio board of regents was established for the governance of the public system of higher education along with the coordination of public and private postsecondary education (idem, §§3333.01 to 3333.15, 1963; see §3333.04. 1973). The board of regents is also directed to develop a master plan that will consider the needs of the people and the role of the public and private sectors (idem, §3333.04 (A), 1973).

Ohio grants certain benefits to the private sector. The law states that "public" colleges and academies are exempt from taxation (idem, §5709.07, 1969) and, further, defines any property used for educational institutions as being used for a public or charitable purpose and therefore exempt (idem, §5709.11, 1969). Private institutions are granted access to the eminent domain powers of the board of regents (idem, §§3377.01 to 3377.16, 1968). In order to provide health services the state has authorized the board of regents to enter into a contract with private accredited medical and dental schools to enroll a designated number of state citizens (idem, §3333.10, 1973). The state is also authorized to enter into contracts with private institutions for academic programs not offered by the state (idem, §3315.09, 1965).

Master Plan

Ohio's plan, entitled Ohio Master Plan for Public Policy in Higher Education 1971 deals with the private sector and its relationship

to public higher education. The plan discusses the future role of private higher education and how to solve its financial crisis. "The Board believed it will be to the social, educational, and economic advantage of Ohio and Ohio taxpayers to give still further attention to the welfare of our private colleges" (Ohio Board of Regents, 1971, p. 3). The plan states that private colleges, through better utilization of facilities by expanding enrollments, can fill the need to provide additional opportunities for state citizens at the bachelors degree level (ibid., p. 5, 13, and 14).

The plan makes several recommendations for the private sector. One is the doubling of enrollment in the 1970s. Another is for additional and improved programs for financial assistance to students. Third, the private sector is to be encouraged to enroll graduates of associate degree programs from community colleges through a contractual agreement. The private institution would charge student tuition equal to that charged in state schools and receive a grant for the balance equal to the institutions usual tuition rate. The state is also to give direct financial assistance to private institutions (ibid., p. 14). The plan cautions that no private institution should be under compulsion to participate in state assistance programs (ibid., p. 15).

In the area of dentistry and medicine, the plan recommends that current public and private school enrollments be expanded, alleviating the necessity for new public facilities (ibid., pp. 48, 56, 58). The state is asked to continue its contracts with private institutions in this area (ibid., pp. 58,77).

Finally, the Board of Regents recommends an allocation to the Ohio College Library Center under contract to provide books on permanent loan to private institutions (ibid., p. 77).

Oklahoma

Summary. The state has 27 public and 15 private institutions within its borders (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 16 percent of the total enrollment in postsecondary institutions in Oklahoma (idem, 1975a, p. 70). The State Regents for Higher Education are directed to plan and coordinate public and private postsecondary institutions (Okla. Stat. Ann. 70, §3201 et seq., 1971). The state's master plan, Oklahoma Higher Education, discusses the coordination of the private sector with the state system of higher education (Hobbs, 1971).

Statutory Law

The not-for-profit corporate law generally regulates the formation of religious, educational and benevolent corporations (Okla, Stat. Ann 18, §541 et seq.). There are also specific regulations governing the establishment of private education corporations within Oklahoma (idem, 70, §§4101 to 4105, 1971). The State Regents for Higher Education are directed to set standards and regulations for the certification of institutions not accredited by a regional accrediting agency (idem, 70. § 4103, 1971). Private institutions must be accredited by either of the above organizations before they receive authority to grant degrees (idem, 70, §4104. 1971).

The State Regents for Higher Education "may coordinate private denominational and other institutions of higher learning with the state system under regulations set forth by the state Regents" (idem, 70, §3206, 1971; Okla. Const. Art. 13A, §4, 1971) However, the regents may not provide financial aid to private institutions under its coordination through appropriation from the legislature (Okla. Stat. Ann. 70, §3212, 1971).

The state of Oklahoma provides tax exemptions to nonprofit educational corporations on property and other items used for the appropriate objectives of the educational corporation (Okla, Const. Art. 10, 6, 1910; Okla, Stat. Ann. 68, §2405, 1971). The state also has a tuition aid program for citizens enrolled in accredited institutions within the state (Okla. Stat. Ann. 70, §626.1 et seq., 1971, see especially 70,, §626.7, 1971). The state's loan program operates under the same stipulations as the tuition grant program (idem, 70, §623, 1971). The regents also have developed a television instructional system used by public and private institutions in Oklahoma (idem, 70, §2166, 1971).

Master Plan

The state's master plan for postsecondary education recommends that the regents and educators in the private sector continue to investigate and develop new cooperative ventures. The types of cooperation include information-sharing, televised instruction, and joint educational programming planning (Hobbs, 1971, p. 25). The plan also states:

> With the beginning of a new decade in higher education, it is time for a fresh approach to possible avenues of cooperation between the public

> and private sectors of higher education. More and more, all institutions are coming to be viewed as a single national resource. Oklahoma should also look upon its institutions of higher learning as a single resource with a view toward utilizing this resource for the people in general, and for the good of both partners in the higher education enterprise [ibid., pp. 25-26].

Oregon

Summary. Oregon has 20 public and 20 private postsecondary institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). Oregon private institutions enroll 11 percent of the total number of students enrolled in postsecondary education in Oregon (idem, 1975a, p. 70). The state board of higher education manages and supervises public higher education within the state (Ore. Stat. Rev., §§351.010 to 351.260, 1973). The Educational Coordinating Council coordinates, develops, plans, and sets policies for the state's public and private postsecondary education institutions (idem, §§351.265 to 351.290, 1965). The comprehensive plan for postsecondary education in Oregon is in developmental stages. However, the state provided several planning documents dealing with the goals and governance of public higher education and goals encouraging cooperation with the private sector.

Statutory Law

The stat not-for profit laws include the formation of educational corporations (idem, §§61.005 to 61.950, 1969). The state board of higher

education must set standards and approve degree programs of postsecondary educational institutions within the state (idem, §351.710 to 351.706, 1959) The board has the power after a hearing to revoke the authority to grant degrees (idem, §351.720, 1959).

The Educational Coordinating Council is composed of representatives of public and private institutions who are not institutional employees (idem, §351.270. 1973). The council is directed to: develop data systems and policy information; establish policy and program objectives according to educational needs; and propose systems to achieve objectives for both public and private sectors of postsecondary education within the state (idem, §351.270, 1973).

The state benefits include the exemption from income tax, property tax, and inheritance tax.[2] The State Scholarship Commission awards scholarships and loans to needy students enrolled in public or private institutions in Oregon (idem, § 348.505 to §620, 1967).

The state also has a program that allows the board of higher education to contract for services within the private postsecondary institutions to increase the educational opportunities within the state (idem, §352.710 et seq., 1971; see especially §352.730, 1971). The statute states:

> (1) Independent institutions of higher education in the state a sunstantial share of all post-secondary students in Oregon and such non-public institutions make an important contribution to postsecondary education in Oregon.

(2) The state's duty to support the achieving of public welfare purposes in education may be, in part, fulfilled by the state's support of those non-sectarian educational objectives achieved through non-public postsecondary institutions.

(3) Many of Oregon's private and independent institutions of higher learning face serious financial difficulties and, should any of these institutions be forced to close, many of their students would seek admission in public institutions creating an added financial burden to the state and an impairment of postsecondary education in Oregon. Such hazards may be substantially reduced and all education in the state improved through the purchase of non-sectarian educational services from Oregon's private and independent institutions [idem, §352.710, 1971].

Pennsylvania

Summary. Pennsylvania has 32 public and 114 private postsecondary educational institutions (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 41 percent of the total number of students in postsecondary institutions in the state (idem, 1975a, p. 70). Within Pennsylvania's department of education the state board of education is the governance body for the state's public institutions and is charged with the coordination for the public, quasi-private, and private institutions of the state

(Purdons Penn. Educ. Stat. Ch. 71, §118.1, 1972; Ch. 71, §10.40, 1969). The state's master plan considers all postsecondary institutions in Pennsylvania.

Statutory Law

The state's not-for-profit corporate law governs the formation of educational institutions (idem, Ch. 15, §7301, 1972). Corporations containing the world "college" or "university" in their name must have the approval of the state board of education (ibid., §7313(c), 1972) which sets standards and qualifications for such corporations (idem, Ch. 24, §2421, 1963). The board has the power to visit colleges and universities and to revoke the authorization to award degrees (ibid., 1224, 1963).

The department of education (idem, Ch. 71, §040 et seq., 1969) is administered by the board of education (ibid., §118.1, 1972). Under the board of education is the Council on Higher Education, the planning and coordinating body for postsecondary institutions in the state (ibid.) Pennsylvania has a complex system of institutional types coordinated by the council. Some institutions are state owned, while other are state-related institutions, defined as private corporations receiving a major portion of their funding from the state. There are also state-aided institutions (Purdons Penn. Misc. Stat. Ch. 385, §2, 1967).

The state has given private nonprofit, educational institutions several benefits. First, these institutions are exempt from taxation under Pennsylvania law (Purdons Penn. Rev. & T. Stat. Ann. Ch. 72, §§3402-303, 1935; 3244, 1935). Pennsylvania has an institutional

assistance grant that gives direct aid to private institutions for each scholarship recipient enrolled (Purdons Penn. Educ. Stat. Ch. 24, §5181 et seq., 1974). The law also allows the state to contract with the private sector for special services through the Higher Education Opportunities Act (ibid., § 2510-301, 1971). Pennsylvania is also authorized to provide appropriations to educational institutions for facilities or real estate purchases (Purdons Penn. Rev. & T. Stat. Ch. 72, §3484, 1911). The law defines a state aided institution as one that receives public funds directly or indirectly for construction or remodeling of buildings (Purdons. Penn. Misc. Stat. Ch. 385, §2, 1967). The Higher Education Facilities Authority provides loans for facilities construction (Purdons Penn. Educ. Stat. Ann. Ch. 24, §5501 et seq., 1963).

The state has several programs of direct aid to students. The state scholarship program is for students enrolled in public pr private higher education (ibid., § 5151 et seq., 1966). A Senatorial Scholarship Program is also available (ibid., §§ 16-16-21, 1961). The Pennsylvania Higher Education Assistance Authority provides guaranteed loans to students attending public or private approved institutions (ibid., §5101 et seq., 1963).

Master Plan

Pennsylvania's Master Plan, entitled The Master Plan for Higher Education in Pennsylvania, was published in 1971. In regard to the private sector it states:

> Independent colleges and universities constitute an important portion of the Commonwealth's total program of higher education. As diverse institutions they

> carry out somewhat different missions which they have defined for themselves, and they serve somewhat different constituencies, all related, however, to Commonwealth needs. Unless continued and future assistance for independent institutions can be made (a) directly to the institutions through expanded student scholarships and loans, (b) directly to chartered institutions through interest-free loans for educational facilities and (c) directly through contractual arrangements for support of particular programs, Pennsylvania's institutions will face problems that will threaten their survival [State Board of Education, 1971, p. 3].

The plan recommends that interest-free loans for construction of facilities at private institutions be made after approval by the appropriate state agencies. The plan also suggests that contracts with private institutions may be the best way to meet program objectives (ibid.) The acceptance of state money, however, would require public accountability on the part of the private institutions even though the state was committed to a diversified sector (ibid., p. 19). Finally the plan recommends interinstitutional cooperation efficiently to provide programs and services for the state (ibid., p. 3).

Tennessee

Summary. Tennessee has 19 public and 43 private institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions enroll 24 percent of the students in higher education in the state (idem, 1975a, p. 70). The Tennessee

Higher Education Commission has planning and supervisory responsibilities for the public system of higher education (Tenn. Code Ann., §§ 49-4201 to 4904212, 1967); however, in drafting the master plan the commission sought input from and discussed problems in the private sector.

Statutory Law

Tennesse not-for-profit corporate law governs the formation of educational corporations (idem, §§ 48-1201 to 48-1206, 1909). Tennessee provides for the licensing or certification of degree programs through petition to the Higher Education Commission (idem, §§49-3901 to 49-3925, 1974; see especially §49-3803(n) , 1974). This provision covers both public and private postsecondary educational institutions, along with proprietary schools (idem, §49-3904, 1974). The commission evaluates an institution on the basis of: the quality of course offerings; the adequacy of facilities; the qualifications of the personnel; the financial stability of the institution; and the quality of the general administrative procedures followed by the institutions (idem, §49-3907(1), 1974). Institutions accredited by an accrediting agency recognized by the National Commission on Accredting will be considered in compliance with this act (idem, §49-3925, 1974).

The Higher Education Commission was established to plan and coordinate public higher education in Tennessee (idem, §49-4201 et seq., 1967). Although private institutions have no formal connection with the commission, the commission established an advisory committee of representatives of the private sector in 1971 (Tennessee Higher Education Commission, 1973, p. 19).

The real and personal property of educational corporations are exempt from taxation (Tenn. Code Ann., §67-513, 1858, and §67-514, 1973).

The Tennessee Student Assistance Agency was established to administer a tuition grant program (idem, §§ 49-5001 to 5025, 1974). The tuition grants are given to needy students attending accredited institutions within the state. The state has also entered into a contract with Meharry Medical College and Vanderbilt University (private institutions) to increase the number of state students enrolled in their medical schools, dental schools, and graduate level nursing programs (idem, §49-4211, 1972). The state pays the schools for each state citizen enrolled, not to exceed the per student appropriation at the medical school (ibid.). The state also has sponsored a loan program for medical and nursing students in both institutions (idem, § 49-5006, 1974).

Master Plan

The master plan, entitled Higher Education for Tennessee's Future, was published in 1973. As one of its goals for the private sector, the commission lists minimizing the competitive relationship between public and private higher education so that duplication and waste can be avoided. (Tennessee Higher Education Commission, 1973, p. 2). The commission attempted to gain a full exchange of information between the public and private sectors by establishing an advisory committee (ibid., pp. 14, 19). The commission also supported the tuition grant program, federal program of student assistance, and contractual agreements for specialized programs as means to stem the enrollment decline in the private sector (ibid., p. 20) It noted that "if the tuition gap between public and private institutions becomes greater, the shift of enrollment to public

colleges is expected to accelerate, thus increasing the financial burden on the state" (ibid., p. 23).

Texas

Summary. The state has 81 public and 55 private postsecondary institutions within its borders (U. S. Department of Health, Education, and Welfare, 1975, p. xxii). The private institutions enroll 16 percent of the students who matriculate at Texas schools (idem, 1975a, p. 70). Under the Higher Education Coordinating Act of 1965, the coordinating board of the Texas College and University System is directed to develop plans for the orderly growth of the Texas system of higher education and to enlist the cooperation fo the private sector in the planning process (Vernon's Tex. Stat. Ann. Art. 2919-e-2, §§ 1 to 27, 1965, especially Art. §2919-e-2, §21, 1965).

Statutory Law

Texas not-for-profit corporate law covers educational corporations (idem, Art. §1396-1.01, 1961) which are allowed to confer degrees and perform all duties necessary to carry out their stated objectives (idem, Art. §1302-3,02, 1961). All nonprofit institutions of learning are exempt from taxation (idem, Art. §71.50.1, 1907).

The coordinating board is given specific direction regarding its relationship with the private sector. The board is to: enlist cooperation from private institutions in developing statewide plans; encourage cooperation between public and private institutions on a shared-cost basis as permitted by law; consider the existing academic programs in the private sector in determining the need for new program in the state's higher education system; and cooperate with the private insti-

tutions to achieve the goals of this act for an efficient and high-quality system of higher education in the state (idem, Art. §2919-3-2, 21, 1965).

The state's financial relationship with the private sector has several aspects. The coordinating board is authorized to award tuition equalization grants to Texas residents attending approved institutions in the state's private sector (idem, Art. §2654h, 1971). The board has also entered into a contract with Baylor University Medical and Dental Colleges for instructing Texas residents in medical and dental studies (idem, Art. §61.091, 1971; Art. §61.201, 1971; see gen. Art. §2019 e-2.1, 1, 1969).

Master Plan

The coordinating board of the Texas College and University System believes in a continuous planning process. The original plan was drafted in 1969 and has been updated twice through reports to the state legislature.

The original plan, Challenges for Excellence, has several recommendations concerning the private sector. It is obvious from this plan that the central issue facing the state in 1969 was how to provide for the enrollment increases projected through 1980. The three alternatives under consideration were: to expand existing senior colleges, to contract with private colleges to increase their enrollment and accomodate state students, and to stabilize enrollments in existing institutions and build new facilities (Coordinating Board, 1969, p. 11). The plan elected number three (ibid.) and proposed six new senior colleges (ibid., p. 20). In the area of health education, however, the plan proposed that

the enrollment of Baylor University's Medical and Dental Colleges be expanded to enroll more Texas students through a contract with the institution (ibid., pp. 23, 24, 31). The board also recommended establishing two new medical education facilities in the state system (ibid., pp. 24-25), although a minority report recommended no new facilities until an assessment of need could be made in 1974 (ibid., p. 27).

The 1973 Annual Report has more to say concerning private higher education's role in the state. The board endorsed a proposal to contract with Southern Methodist University to provide state citizens additional space in the S.M.U. Law School (Coordinating Board, 1973, p. 13). The report also acknowledges that a task force of health experts would be reporting their results regarding health education in Texas (ibid.).

Texas Higher Education 1968-1980, published by the coordinating board in 1975, has several recommendations which would directly affect the private sector in the state. The report states that educational opportunities can be expanded for state citizens through modification of the role and scope of public institutions and through contracts with private institutions in some areas (Coordinating Board, 1975, pp. 5-6). The coordinating board recommends that no new senior-level institutions or professional schools be established in the next two years (ibid., pp. 5-9). The board recommends that no new law schools be established and feels that state needs can be met by expanding existing law schools (ibid., pp. 5-13). A 1974 study also recommends that no new medical facilities be established and found that needs could be met by expanding existing medical facilities (ibid., pp. 5-13, 5-14). Finally, the report recommends the retention of the tuition Equalization Grant Program (ibid., pp 5-26).

Virginia

Summary. Virginia has 36 public and 34 private institutions (U.S. Department of Health, Education, and Welfare, 1975, p. xxii). The private sector enrolls 14 percent of the total enrollment in Virginia higher education (idem, 1975a, p. 70). The State Council of Higher Education for Virginia is the coordinating body for public higher education (Va. Code, §23-9.3 et seq., 1974). The state's master plan, entitled The Virginia Plan for Higher Education (1974), deals with the public sector but includes data, plans, and recommendations regarding the private sector.

Statutory Law

Virginia's not-for-profit corporate law governs the establishment of educational corporations (Va. Code, §§13.1-201 to 13.1-296, 1975), which may not use the title "college" or "university" unless they have been properly certified (idem, §23-8.1, 1970). Degree-granting institutions established before 1968 were certified by the board of education. An institution is now certified by the State Council of Higher Education (idem, §23-9, 1968). Fines are levied for violations of these laws (ibid.). Educational institutions are exempt from property and sales tax (idem, §58-12, 1974; Va. Const., §183, 1970). The State Council of Higher Education for Virginia is responsible for the coordination of public higher education (Va. Code, §23-9.3 et seq., 1974). The act states that the purpose of the council is "to promote the development and operation of an educationally and economically sound, vigorous, progressive, and coordinated system of higher education in the state of Virginia" (idem, §23-9.3, 1974).

The duties of the council include the preparation of plans for a coordinated system of public higher education. The council is also to serve in an advisory capacity on academic, administrative, financial, and facilities matters to institutions whose primary purpose is to provide education in areas other than religion. The council may review contracts for services or other joint activity between public and private institutions (idem, §23-9.6:1(L), 1974). The council has an advisory committee composed of members of the private sector to advise the council of problems facing that sector and the ramifications of the council or state programs (idem, §23-9.10:2, 1974).

The state of Virginia amended its constitution to allow students attending private institutions to receive grants from the state and to allow contracts between public and private institutions (Va. Const. Art. 8, §11, 1974). Virginia has instituted a tuition assistance loan program to students in the private sector (Va. Code §23-4.1 and §38.11 to §39.18, 1972). The state has also established the Virginia College Building Authority as a means to acquire loans--using tax exempt bonds--for construction of buildings in the private sector (idem, § 23-3.2 and §30.23 to §30.238, 1964).

Master Plan

The Virginia Plan for Higher Education was published by the State Council on Higher Education for Virginia (1974). In discussing accessibility as a goal the plan cites the need to reduce the differential between public and private sector tuitions and notes that the state efforts in this regard should be continued (Ibid., p. 14). Excellence,

another goal, is intended to enhance institutional diversity through strong public and private sectors (ibid., p. 17). The plan stressed the need for greater coordination of both the public and private sectors as a means of strengthening both while maintaining diversity (ibid., p. 21).

In light of these goals, the plan makes several recommendations that affect private institutions. First, the plan recommends increased financial support to both sectors for student-assistance programs based on financial need (ibid., p. 26). Second, the plan notes that the continuation of the private sector should not be at the expense of the public sector (ibid., p. 27), but recommends a constitutional amendment to allow contracts with and financial aid to students in the private sector (ibid., pp. 27-28). Third, the council recommends that contractual arrangements with private institutions be promoted to meet state program needs (ibid., p. 37). The council also includes the plans submitted by private institutions. This in no way implies council approval of them, however; they are presented for information and were considered in developing the document (ibid., p 111).

Footnotes

[1] Alfred University:. N. Y. Educ. §355(1a) (McKinny, 1968); §6101 to §6104 (McKinny, 1972); §§ 398, 399 (McKinny, 1969); Cornell University: N.Y. Educ. §305 (McKinny, 1949); §5701 to 5716 (Mckinny, 1954) C.C.N.Y. Code §620 to §627 (McKinny, 1971).

[2] Ore. Rev. Stat. §§316.277 (1969; §3707.130 (1971); §307.145 (1971) §307.195 (1971).

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The Meaning of "Private" Today

This study has presented the legal doctrine of state action as a means to define the distinction between public and private actions. Statutes and master-plans indicate the degree to which states and private institutions have established interdependent relationships. These relationships will now be discussed in light of the state action doctrine.

"State Action"

This discussion is not an attempt to develop a yardstick for state action. Only by "sifting facts and weighing circumstances" will a court arrive at a decision on a question of "state action." We can, however, outline the significance of existing relationships in light of the case law.

It is apparent that a number of contacts have an insignificant effect on the issue of state action by a private institution. For example, certification and licensing programs are not instituted to control the college or university, but only to protect the public from fraudulent programs. Such involvements between the government and private entities do not establish an interdependent relationship. Financial aid to students enrolled in higher education within the state's borders are in the same category. To deny such programs to students who choose to enroll in the private sector could be viewed as discrimination against state citizens who elect to attend private institutions.

Several other contacts - although benefitting private institutions - likewise seem insufficient by themselves to support the "state action" argument. One, the tax exempt status as discussed in Chapter 2 may be mandated by the First Amendment "free exercise" and "establishment clauses" to all nonprofit corporations. The few cases in which private institutions obtained eminent domain powers are given little significance in the case law. Taken collectively these contacts do not indicate an interdependent relationship between the state and private institutions.

Nor have the number of interdependent relationships been sufficient individually to yield a finding of state action. Such arrangements as financial aid to programs, consortium agreements, or contracts alone may not be significant, depending on their nature. Categories three and four have the largest number and most complex set of these types of contacts between the state and the private sector.

One argument for financial aid programs is that they provide students with the freedom to choose between public and private higher education. Such freedom of choice has been diminishing as a result of tuition increases in the private sector. Another argument is that they are helping to ensure the survival of the private sector during its present deteriorating financial condition. Both arguments can be significant to a finding of state action. Such plans, it could be argued, give special favor to the private sector, whether explicitly expressed in the statutes or evidencedsimply by the existence of the aid plans, because the state is relying on the sector to educate a portion of its citizens. Illinois, Minnesota, New Jersey, New York,

North Carolina, and Pennsylvania seems particularly vulnerable to such a ruling simply because of the number of financial aid programs granted to students and institutions in their private sectors. It should be noted that some of these aid programs indicate that the state is opting to meet its need through programs - such as in law or medicine - provided by the private sector, instead of establishing new public facilities. The master plans of these states verify that this is what they have done. A significant interdependence thus appears to exist, giving weight to the position that at least in such programs as law or medicine, private institutions can be viewed as an agent of the state.

In the area of contracts, the issue is whether the contract creates obligations and duties for a private institution that make it an agent of the government. It seems, for example, that contracts with private institutions to increase the number of spaces for medical, law, or dental students in the private sector in order to expand state programs would be vulnerable to a finding of state action, just as a consortium or cooperative arrangements between public and private institutions to meet statewide regional needs may yield state action. This is particularly true when such arrangements require the private institution to subject itself to mandatory coordination and planning by a state agency or to submit extensive annual reports to the state.

The existence of aid programs and contractual or consortium arrangements provide fuel for the public-function argument. At the same time, there is also a preponderance of language in the statutes and master plans that lends credence to an affirmative finding that private institutions are performing a public function. Coordination and planning also give more weight to the public-function argument,

The aggregate of state contacts appears to make plausible a court's finding of state action for those institutions participating in state aid and contract or consortium programs. The question also exists as to the range of state action. Some would argue that the private institution is an agent of the state only in areas where significant interdependent contacts exist between the state and the private institution, while others argue that the mere existence of significant contacts - yielding a finding of state action - implicate the private institution as an agent of the state in all of its actions. The answer to this legal question will emerge as courts continue to grapple with the elusive doctrine of state action.

The Meaning of "Private"

We have studied the doctrine of state action not only in its application to private higher education but also to gain a better understanding of the meaning of "private" higher education. One significant finding of state action is that at least in an action defined by the court, the private institution is acting as an agent of the state. Such a finding means that the institution in the defined area is part of the state's system of higher education. Thus, the private institution and the state have established an interdependent relationship.

This relationship can and does affect the private character (that is, the program and mission) of the institutions. For example, as discussed in Chapter 2, the institution might be subject to a taxpayer's suit if state action were found. Such a suit may require the state to review budgets for programs where state action is involved. The

interests of a political entity have now been injected into the decisions regarding any programs that are part of the relationship between that entity and the institution. As such relationships multiply, the result could be loss of diversified programs and types of institutions.

Statutory relationships have taken the form of grants-in-aid, contracts, consortiums, and coordination efforts on the part of the state. In such programs, private institutions are dependent on state aid in providing education in an economically feasible way, while the state becomes dependent on the private institutions to educate portions of the state citizenry. Such dependent relationships significantly alter the private character of the institutions, which become subjected to political pressure because of their increasing importance to the state's system of higher education. Such political pressure may force conformity to state requirements, resulting in loss of identity and a decrease in the diversity of educational programs within the state.

Coordination Versus Autonomy

In sociological terms, Eugene Litwak and Lydia Hylton (1969, pp. 339-356) discuss two functional advantages of organizational independence. One is to accomodate a conflict of values where the conflicting values are all desirable (ibid., p. 340). In higher education there are a number of values that may be in conflict. For example, a college or university may decide to offer both vocationally oriented academic programs and programs that foster the search for knowledge for intrinsic value. Such conflicting values may, however, be difficult to promote within one organization. Therefore, independent, autonomous organizations within higher education exist to promote one or the other of these values.

Independent, autonomous organizations also help resolve social conflicts. A social conflict exists, for example, where internal values are consistent but a lack of resources forces an organization to choose among them (ibid., p. 341). Because higher education composes several types of autonomous organizations, society is not compelled to choose among values. One college can specialize in one value area, while another focuses on another.

The two sectors of higher education will continue to resolve certain value and social conflicts for society only if the private institutions continue to be independent, autonomous organizations, able to make decisions regarding goals, purposes, and programs. Alvin W. Gouldner (1960, pp. 161-178) points out the need to differentiate various organizations within a delivery system on the basis of their dependence on other parts of the system. Dependency is contingent on access to elements outside the system; that is, independence or "functional autonomy" will result if the organization has access to resources outside the system. For private institutions, however, a growing relationship with the state could erode institutional autonomy.

Litwak and Hylton (1969) define a coordinating agency as a "formal organization whose major purpose is to order behavior between two or more other formal organizations" (ibid., p. 342). The functions of the coordinating agency are outlined as communicating information, adjucating disputes, setting standards, and promoting areas of common interest. Finally, the coordinated organizations are separate entities with mutual goals demanding cooperation.

They hypothesize that the factors that lead to the development of a coordinating agency are (1) the existence of an interdependent relationship, (2) agency awareness of this interdependent relationship, and (3) the standardization of the areas to be coordinated. When all these factors are present, coordination programs will be established.

As the previous discussion indicates, the first condition is met. The second condition, agency awareness of an interdependent relationship, can be shown by looking again at some of the findings in this study. Both the statutes and the master plans in some states provide evidence that the states are aware of their interdependence with private higher education. For example, the language in the statutes and master plans indicates a responsibility to ensure the survival of the private sector in the planning process and in the coordination of a state system of higher education involving both public and private sectors.

Finally, this study has found not only an awareness by the coordinating agency of an interdependent relationship, but also the areas directly affected by standardization are an institution's data collection system and budgetary process. Federal legislation has attempted to standardize data collection within higher education. The need of a state coordinating agency to have greater involvement by the private sector in both the planning and coordination process can be viewed as a way to achieve the standardization necessary to effect coordination.

The final part of the Litvak and Hylton hypothesis on coordination deals with need for conflict. Conflict, they postulate, is necessary to maintain the interorganizational characteristics of a system, because

it prevents the merger of member organizations into one large organization. Conflict is present wherever institutional autonomy exists. Therefore, member organizations must not become completely reliant on the coordinating agenct for resources, lest they lose the ability to maintain their identity.

The trend appears to be toward an increasing number of contacts between the state and private higher education and the establishment of interdependent relationships between the state, its public sector, and private institutions. This trend is particularly noticeable in the area of financial aid programs to students and private institutions. But it is also manifested in the reliance on the private sector to meet state educational needs through such formalized contacts as contracts or consortiums. If financial problems continue to plague both sectors, the number of these contacts should continue to increase.

Increased financial aid from the state could mean increased coordination of receiving institutions. Such coordination may mean that decisions formerly made by the institution would be made in the state capitol. This is certainly true in the states that have instituted a superboard for the state's public postsecondary educational system. The state agency makes decisions for the total system that may be good for some institutions but devastating for others. The decison-making process is moved out of the hands of those closest to the problem and to those who may not be familiar with the particular needs of a specific institution. The decision-making process also becomes a standardized process where data is plugged in through predesigned formulas.

In this coordination process institutional types are standardized and unique institutional identities are lost. Private institutions will be increasingly coordinated by the state system as the trend toward an interdependent relationship continues. Would such regulation have the same effect on private institutions as on public institutions? Is the distinction between public and private higher education as clear as it was 20 years ago?

Some would argue that the institution's ability to set its purposes and goals is the essence of the private sector. The existence of this sector allows for a plurality of programs and provides greater opportunity for innovation. They believe that the price the private sector must pay in losing some decision-making capabilities is too high. On the other hand, those who argue for state aid extoll the virtues of pluralism as the main reason for saving the private sector from extinction. However, if financial aid and contract programs means state regulation and the loss of some decision-making powers, then the salvation of private institutions may indeed be their demise. If diversity in higher education is to be preserved, then the educators must understand the effects of interdependent relationships on institutional autonomy and diversity. Additional information is needed regarding the effects of governmental regulation on higher education. Such information should include the effects of financial aid programs, administrative regulations promulgated under state programs, and the effect of other contacts with the state and public institutions on the decision-making process in private institutions. More importantly,

information is needed to determine whether such programs and regulations have changed the private institutional goals and purposes over the past decade. The issue is not whether or not to fund the private sector, but rather how to fund private institutions while protecting their autonomy in the coordinating process.

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